WSR 19-21-040
PROPOSED RULES
PUGET SOUND CLEAN AIR AGENCY

[Filed October 8, 2019, 4:50 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Proposed Regulation IV of the Puget Sound Clean Air Agency, Clean Fuel Standard (CFS).

Webpage address http://www.pscleanair.org/CleanFuel Standard.

Hearing Location(s): On December 19, 2019, at 12:30 p.m., at the Washington State Convention Center, 705 Pike Street, Seattle, WA 98101-2310. Public comment will be taken from 12:30 to 4:30 p.m., and 5 to 8 p.m.

Date of Intended Adoption: The agency estimates no sooner than February 27, 2020.

Submit Written Comments to: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email CleanFuels@pscleanair.org, fax 206-343-7522, by January 6, 2020.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email christinab@pscleanair.org, by December 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to reduce and/or limit greenhouse gas (GHG) emissions to protect human health and the environment. The proposed rule would achieve the above through a reduction in the life cycle carbon intensity of transportation fuels that are sold, supplied, or offered for sale in the agency's jurisdiction (King, Kitsap, Pierce and Snohomish counties). The proposed rule would result in a life cycle carbon intensity reduction of up to twenty-five percent by 2030.

The proposed rule sets annual life cycle carbon intensity reduction benchmarks, starting with a reporting year only. Fuels whose carbon intensities are above the reduction benchmark generate deficits, and fuels whose carbon intensities are below the reduction benchmark generate credits. One credit or deficit is equal to one metric ton of carbon dioxide equivalent (CO_2e). Each year, deficit producers are required to "retire" credits in equal proportion to their deficits in order to comply with the program; this can include a variety of mechanisms: Purchasing credits from credit generators, coprocessing biomass into renewable fuels, and/or generating credits through the refinery investment credit program.

Regulated entities required to participate include importers and producers of fuels such as gasoline, diesel, ethanol, biodiesel, and fossil compressed natural gas (CNG) and liquefied natural gas (LNG). Providers of fuels with a carbon intensity lower than the benchmark (credit generators) are eligible to "opt in" to CFS if they want to generate and sell credits. Opt-in fuels include electricity, bio-CNG, bio-LNG, hydrogen, renewable propane, and alternative jet fuel. The proposed rule includes exemptions for specific fuel applications, including interstate locomotives, ocean-going vessels, aircraft, military tactical vehicles and tactical support equipment, and small volume fuel producers and fuels used in small volumes.

In addition to the above, the proposed rule includes provisions that detail:

- How carbon intensities are calculated for fuels, how all entities must submit their applications for carbon intensities, and the agency's approval process for carbon intensities;
- How credits and deficits are calculated;
- The process for all parties to register and submit quarterly and annual reports;
- How credit revenue is to be used by electric utilities and transit agencies;
- Establishes an equity credit aggregator that is eligible to utilize electricity credits not claimed by others;
- Establishes a credit clearance market, a mechanism used if deficit generators are unable to retire sufficient credits during the compliance period (January 1 through December 31 each year); and
- Provisions for enforcement, confidentiality, severability, and definitions and acronyms.

The agency estimates that the proposed rule, with corresponding carbon intensity (CI) reductions in transportation fuel of fifteen percent, twenty percent, and twenty-five percent, would result in annual reductions of 1.8, 2.3, and 3 million metric tons GHG emissions by 2030, respectively. Using the Washington utilities and transportation commission (UTC) recommended value for the social cost of carbon in 2030 ($87/ton), the annual avoided costs would be approximately $150 million, $200 million, and $260 million, respectively, per year in 2030, (see UTC, social cost of carbon, https://www.utc.wa.gov/regulatedIndustries/utilities/Pages/SocialCostofCarbon.aspx). The social cost of carbon includes property and infrastructure damage and mitigation, agricultural losses, energy costs, and health impacts, but it is not considered exhaustive. (EPA[1], WUTC[2], Washington state department of ecology[3].)

1 US Environmental Protection Agency (EPA). EPA Fact Sheet - Social Cost of Carbon. December 2016. https://www.epa.gov/sites/production/files/2016-12/documents/social_cost_of_carbon_fact_sheet.pdf.

2 Washington Utilities and Transportation Commission. Social Cost of Carbon. Revised August 29, 2019. https://www.utc.wa.gov/regulatedIndustries/utilities/Pages/SocialCostofCarbon.aspx.

3 Washington State Department of Ecology. Final Cost-Benefit and Least-Burdensome Alternative Analysis, Clean Air Rule. September 2016. https://fortress.wa.gov/ecy/publications/documents/1602015.pdf.

The agency estimates that the proposed rule will result in the reduction of harmful criteria pollutants and air toxics, particularly in communities located along major roadways. The agency estimated the fine particle pollution emissions reductions associated with CI reductions of transportation fuel. Through the agency's consultant, ICF, the agency estimated the corresponding monetary value of avoided deaths from reducing these emissions, using EPA's Benefits Mapping and Analysis Program (BenMap) (see ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels

Analysis, Final Report. September 2019, http://www.pscleanair.org/DocumentCenter/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=). The results showed an estimated annual value of $10 to $40 million reduced costs per year based on avoided deaths. These results do not include other health endpoint reductions for fine particle pollution including: Asthma exacerbation, chronic obstructive pulmonary disease, work loss days, nonfatal heart attacks, etc.[4] Qualitatively, the agency also anticipates a reduction in mobile source air toxics from this rule, including known carcinogens such as benzene and diesel particulate matter.[5,6] A reduction in these pollutants corresponds to a reduction in potential cancer risk, and the impact will be greatest for communities with greatest current exposure (those along major roadways).

4 US Environmental Protection Agency (EPA). Integrated Science Assessment for Particular Matter. December 2009. https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=216546.

5 EPA. How Mobile Source Pollution Affects Your Health. https://www.epa.gov/mobile-source-pollution/how-mobile-source-pollution-affects-your-health.

6 Washington State Department of Ecology. Concerns About Adverse Health Effects of Diesel Engine Emissions. December 2008. https://fortress.wa.gov/ecy/publications/documents/0802032.pdf.

Through the agency's consultant, ICF, the agency developed several compliance scenarios that could meet a regional CFS and developed corresponding cost of implementation estimates. ICF modeled the macroeconomic cost and benefits of those scenarios across the agency's jurisdiction using the REMI model. The main costs to implement the rule stem from investments that fuel producers must make to comply with the rule, as well as the differential (increased) cost to purchase electric vehicles compared to conventional internal combustion engine vehicles. The CFS provides flexibility for fuel producers to reduce their costs of compliance, but the agency conservatively modeled that they do little to reduce their cost of compliance, and pass most of it on to consumers. Additionally, the extra cost to purchase electric vehicles is forecast to decrease substantially over time. These combined costs are largely offset by savings from CFS that comes in the form of reduced fueling costs, due to electric vehicles being much cheaper to fuel than internal combustion engines. For the life cycle carbon intensity reduction of up to twenty-five percent by 2030 (scenario D), overall, these costs and savings offset each other: Across the four counties the impact on both employment growth and gross regional product growth was one tenth of one percent or less. *See* ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels Analysis, Final Report. September 2019, http://www.pscleanair.org/DocumentCenter/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=.)

Reasons Supporting Proposal: In February 2017, the agency's board of directors adopted science-based climate targets to reduce GHG emissions by fifty percent in 2030 and eighty percent by 2050 (below 1990 levels). Since almost half of all GHG emissions in the agency's jurisdiction are from the transportation and mobile sector, the agency's board of directors directed staff to analyze potential strategies to reduce GHG emissions in this sector. An analysis of a range of potential strategies to reduce transportation GHG emissions indicated that a CFS would result in substantial reductions in transportation-related GHG emissions (see Puget Sound Clean Air Agency. Candidate Actions to Reduce Transportation Greenhouse Gas Emissions - Evaluation Report, June 2018, http://www.pscleanair.org/Document Center/View/3314/Evaluation-Report_Transportation-Actions_June 2018?bidId=).

A subsequent report indicated that a regional clean fuel standard is feasible to implement with forecasts of currently available fuels (see ICF for Puget Sound Clean Air Agency. Puget Sound Regional Transportation Fuels Analysis, Final Report. September 2019, http://www.pscleanair.org/Document Center/View/3809/Clean-Fuel-Standard-Technical-Analysis---Final-Report?bidId=). As stated above, the ICF report showed a clean fuel standard provides public health cobenefits through reduction of fine particle air pollution, particularly in communities near major roadways. The report also included a macroeconomic impacts review and concluded that for the life cycle carbon intensity reduction of up to twenty-five percent by 2030 (scenario D), impact to the regional economy (as measured by changes to employment and gross regional product growth) was almost indiscernible: One tenth of one percent or less, positive or negative.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Under chapter 79.94 RCW, the agency may adopt rules in its jurisdiction establishing emission standards for types of emissions or types of sources of emissions, or a combination of these. The proposed CFS is intended to establish emission standards for GHGs from producers, importers, and distributors of transportation fuel that supply the agency's four-county jurisdiction (King, Kitsap, Pierce and Snohomish counties).

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathy Strange, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4095.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141(1). However, costs considerations are discussed above.

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

Is exempt under chapter 19.85 RCW.

Explanation of exemptions: Chapter 19.85 RCW does not apply to local air agencies which is not a state agency (*see* RCW 70.94.141(1)). However, cost considerations are discussed above.

October 8, 2019
Craig Kenworthy
Executive Director

NEW REGULATION

Regulation IV of the
PUGET SOUND CLEAN AIR AGENCY
1904 3rd Avenue, Suite 105
Seattle, Washington 98101-3317

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ARTICLE 1: PURPOSE AND DUTY

SECTION 1.01 Purpose

Transportation contributes almost half of greenhouse gas (GHG) emissions in the Agency's jurisdiction (comprised of King, Kitsap, Pierce, and Snohomish counties in the State of Washington). The purpose of this regulation is to reduce greenhouse gas (GHG) emissions and prevent air pollution by reducing the full fuel-cycle carbon intensity of the transportation fuel pool used in the Agency's jurisdiction by 25 percent below 2016 levels by 2030 through a Clean Fuel Standard (CFS), and associated regulatory program. The CFS will help achieve the Agency's adopted target to reduce GHG equivalent emissions by 50 percent below 1990 levels by 2030, and 80 percent below 1990 levels by 2050 (Resolution 1361, February 23, 2017).

Article 2: Definitions and Acronyms

SECTION 2.01 Definitions for the Purposes of the CFS

(a) **ABOVE THE RACK** means sales of transportation fuel at pipeline origin points, pipeline batches in transit, and at terminal tanks before the transportation fuel has been loaded into trucks.

(b) **AGENCY** means the Puget Sound Clean Air Agency, whose jurisdiction includes King, Kitsap, Pierce, and Snohomish counties in the State of Washington.

(c) **AGGREGATOR OR CREDIT AGGREGATOR** means an entity that registers to participate in the Clean Fuels Program, on behalf of one or more credit generators to facilitate credit generation and trade credits.

(d) **AGGREGATOR DESIGNATION FORM** means an Agency-approved document through which a credit generator designates an aggregator to act on its behalf.

(e) **AGGREGATED TRANSACTION INDICATOR** means an identifier for reported transactions that are a result of an aggregation or summing of more than one transaction in CFS Online. An entry of 'True' indicates that multiple transactions have been aggregated and are reported with a single Transac-

tion Number. An entry of 'False' means that the transaction record results from one fuel transaction reported as a single Transaction Number.

(f) **ALTERNATIVE FUEL** means any transportation fuel that is not gasoline or diesel fuel, including those fuels specified in Section 4.03.

(g) **ALTERNATIVE JET FUEL** means a drop-in fuel, made from petroleum or non-petroleum sources, which can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines or existing fuel distribution infrastructure.

(h)**AVIATION GASOLIN**E means a complex mixture of volatile hydrocarbons, with or without additives, suitably blended to be used in aviation engines.

(i) **BATTERY ELECTRIC VEHICLE** or BEV means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

(j) **BELOW THE RACK** means sales of clear or blended gasoline or diesel fuel where the fuel is being sold as a finished fuel for use in a motor vehicle.

(k) **BILL OF LADING** means a document issued that lists goods being shipped and specifies the terms of their transport.

(l) **BIODIESEL** means a fuel as defined in Washington RCW 19.112.010.

(m) **BIODIESEL BLEND** means biodiesel blended with diesel.

(n) **BIOGENIC FEEDSTOCK** means a feedstock that has been identified as likely to be suitable for co-processing with petroleum including oil from pyrolysis, triglycerides such as virgin vegetable oils, used cooking oils, and fat-based oils to produce renewable hydrocarbon fuels.

(o) **BIO-CNG** means biomethane which has been compressed to CNG. Bio-CNG has equivalent performance characteristics when compared to fossil CNG.

(p) **BIO-LNG** means biomethane which has been compressed and liquefied into LNG. Bio-LNG has equivalent performance characteristics when compared to fossil LNG.

(q) **BIO-L-CNG** means biomethane that has been liquefied and transported to a dispensing station where it was then regasified and compressed to a pressure greater than ambient pressure and has performance characteristics at least equivalent to fossil CNG.

(r) **BIOMASS** means non-fossilized and biodegradable organic material originating from plants, animals, or microorganisms, including: products, by-products, residues and waste from agriculture, forestry, and related industries; the non-fossilized and biodegradable organic fractions of industrial and municipal wastes; and gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material.

(s) **BIOMASS-BASED DIESEL** means a biodiesel or a renewable diesel.

(t) **BIOMETHANE** means methane derived from biogas, or synthetic natural gas derived from renewable resources, including the organic portion of municipal solid waste, which has been upgraded to meet standards for injection to a natural gas common carrier pipeline, or for use in natural gas vehicles, natural gas equipment, or production of renewable hydrogen. Biomethane contains all of the environmental attributes associated with biogas and can also be referred to as renewable natural gas.

(u) **BLENDSTOCK** means a component that is either used alone or is blended with one or more other components to produce a finished fuel used in a motor vehicle.

(v) **BUFFER ACCOUNT** means an account held by the Agency that collects and stores forfeited credits for the purpose of addressing invalidated credits or uncovered deficits.

(w) **BUSINESS PARTNER** refers to the counterparty in a specific transaction involving the fuel reporting entity. This can be either the buyer or the seller of fuel.

(x) **CARBON INTENSITY (CI)** means the quantity of life cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO_2e/MJ).

(y) **CARGO HANDLING EQUIPMENT** means any off-road, self-propelled vehicle or equipment, other than yard trucks, used at a port or intermodal rail yard to lift or move container, bulk, or liquid cargo carried by ship, train, or another vehicle, or used to perform maintenance and repair activities that are routinely scheduled or that are due to predictable process upsets. Equipment includes, but is not limited to, rubber-tired gantry cranes, top handlers, side handlers, reach stackers, loaders, aerial lifts, excavators, tractors, and dozers.

(z) **CARRYBACK CREDIT** means a credit that was generated during or before the prior compliance period that a regulated entity acquires between January 1st and April 30th of the current compliance period to meet its compliance obligation for the prior compliance period.

(aa) **CFS ONLINE** means the interactive, secured, web-based, electronic data tracking, reporting and compliance system that the Agency develops, manages, and operates to support the Clean Fuel Standard.

(bb) **CLEAN FUEL** means a transportation fuel whose carbon intensity is lower than the applicable clean fuel standard.

(cc) **CLEAN FUEL STANDARD PROGRAM** means the Agency program that manages implementation of Regulation IV, including CFS Online.

(dd) **CLEAR DIESEL** means a light middle or middle distillate grade diesel fuel derived from crude oil that has not been blended with a renewable fuel.

(ee) **CLEAR GASOLINE** means gasoline derived from crude oil that has not been blended with a renewable fuel.

(ff) **COMPRESSED NATURAL GAS (CNG)** means natural gas that has been compressed to a pressure greater than ambient pressure.

(gg) **CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS** means a measure that examines the changes in the price of a basket of goods and services purchased by urban consumers, and is published by the U.S. Bureau of Labor Statistics.

(hh) **CONTROL OFFICER** means the Air Pollution Control Officer of the Agency, as defined in RCW 70.94.030.

(ii) **CONVENTIONAL JET FUEL** means aviation turbine fuel including Commercial and Military Jet Fuel. Commercial Jet Fuel includes products known as Jet A, Jet A-1, and

Jet B. Military Jet Fuel includes products known as JP-5 and JP-8.

(jj) **CO-PROCESSING** means the processing and refining of renewable or alternative low-carbon feedstocks intermingled with crude oil and its derivatives at petroleum refineries.

(kk) **CREDIT CLEARANCE MARKET** means a cost-containment mechanism defined in Section 7.07. The market is held at the agency's discretion between June 1st and July 31st of each year, in which entities that have already demonstrated compliance for the previous year may pledge and sell accumulated credits and entities that have not yet demonstrated compliance for the previous year are required to purchase and retire their pro rata share of credits.

(ll) **CREDITS** and **DEFICITS** means the units of measure used for determining a regulated entity's compliance with the average carbon intensity requirements. Credits and deficits are denominated in units of whole metric tons of carbon dioxide equivalent (CO_2e).

(mm) **CREDITS ACQUIRED** means the total credits acquired by the regulated entity in the current compliance period from other regulated entities, credit generators, and aggregators, including carryback credits.

(nn) **CREDITS CARRIED OVER** means the total credits carried over by the regulated entity from the previous compliance period.

(oo) **CREDITS GENERATED** means the total credits generated by the regulated entity in the current compliance period.

(pp) **CREDIT GENERATOR** means a fuel reporting entity or a project operator that generates CFS credit in CFS Online.

(qq) **CREDITS ON HOLD** means the total credits placed on hold due to enforcement or an administrative action. While on hold, these credits cannot be used for meeting the regulated entity's compliance obligation.

(rr) **CREDITS RETIRED** means the total credits retired by the regulated entity within CFS Online for the current compliance period.

(ss) **CREDITS SOLD** means the total credits sold by, or otherwise transferred from, the regulated entity in the current compliance period to other regulated entities, credit generators, and aggregators.

(tt) **CRUDE OIL** means any naturally occurring flammable mixture of hydrocarbons found in geologic formations.

(uu) **DEFICITS CARRIED OVER** are the total deficits carried over by the regulated entity from the previous compliance period.

(vv) **DEFICITS GENERATED** means the total deficits generated by the regulated entity for the current compliance period.

(ww)**DEFICIT GENERATO**R means a fuel reporting entity that generates deficits in CFS Online.

(xx) **DIESEL FUEL** (also called conventional diesel fuel) means a light middle distillate or middle distillate fuel suitable for compression ignition engines blended with not more than 5 volume percent biodiesel and conforming to the specifications of ASTM D975.

(yy) **E10** means gasoline containing 10 volume percent fuel ethanol.

(zz) **ELECTRIC UTILITY** means a consumer-owned utility or investor-owned utility, as those terms are defined in RCW 19.29A.010.

(aaa) **ELECTRIC CARGO HANDLING EQUIPMENT (eCHE)** means cargo handling equipment using electricity as the fuel.

(bbb) **ELECTRIC POWER FOR OCEAN-GOING VESSEL (eOGV)** means shore power provided to an ocean going vessel at-berth.

(ccc) **ELECTRIC TRANSPORT REFRIGERATION UNITS (eTRU)** means refrigeration systems powered by electricity designed to refrigerate or heat perishable products that are transported in various containers, including semi-trailers, truck vans, shipping containers, and rail cars.

(ddd) **ELECTRIC VEHICLE (EV)**, for purposes of this regulation, refers to Battery Electric Vehicles (BEVs) and Plug-In Hybrid Electric Vehicles (PHEVs).

(eee) **ENERGY ECONOMY RATIO (EER)** means the dimensionless value that represents the efficiency of a fuel as used in a powertrain as compared to a reference fuel used in the same powertrain. EERs are often a comparison of miles per gasoline gallon equivalent between two fuels. EERs for fixed guideway systems are based on megajoules/number of passenger-miles.

(fff) **ENVIRONMENTAL ATTRIBUTE** means greenhouse gas emission reduction recognition in any form, including voluntary emission reductions, offsets, allowances, credits, avoided compliance costs, emission rights and authorizations under any law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for greenhouse gas emissions that is established, certified, maintained, or recognized by any international, governmental, or non-governmental agency.

(ggg) **ETHANOL** means denatured fuel ethanol intended for blending with gasoline for use in spark ignition engines that conforms to the specifications of ASTM D4806.

(hhh) **EQUITY CREDIT AGGREGATOR** means a qualified entity approved by the Agency to aggregate credits for electricity used as a transportation fuel, when those credits would not otherwise be utilized, for the purpose of addressing equity in the promotion of electric transportation options.

(iii) **FINISHED FUEL** means a fuel that is used directly in a vehicle for transportation purposes without requiring additional chemical or physical processing.

(jjj) **FIRST FUEL REPORTING ENTITY** means the first entity responsible for reporting in CFS Online for a given amount of fuel. This entity initially holds the status as the fuel reporting entity and the credit or deficit generator for this fuel amount, but may transfer either status.

(kkk) **FIXED GUIDEWAY SYSTEM** means a system of public transit electric vehicles that can operate only on its own guideway (directly operated), or through overhead or underground electricity supply constructed specifically for that purpose, such as light rail, heavy rail, cable car, street car, and trolley bus.

(lll) **FOSSIL CNG** means CNG that is derived solely from petroleum or fossil sources, such as oil fields and coal beds.

(mmm) **FOSSIL LNG** means LNG that is derived solely from petroleum or fossil sources, such as oil fields and coal beds.

(nnn) **FOSSIL L-CNG** means L-CNG that is derived solely from petroleum or fossil sources, such as oil fields and coal beds.

(ooo) **FUEL PATHWAY** means, for a particular finished fuel, the collective set of processes, operations, parameters, conditions, locations, and technologies throughout all stages that the Agency considers appropriate to account for in the system boundary of a complete well-to-wheel analysis of that fuel's life cycle greenhouse gas emissions.

(ppp) **FUEL PATHWAY APPLICANT** refers to an entity that has registered in the Alternative Fuel Portal and has submitted an application including all required documents in support of the application requesting a certified fuel pathway.

(qqq) **FUEL PATHWAY CODE** means the identifier in CFS Online that applies to a specific certified fuel pathway.

(rrr) **FUEL PATHWAY HOLDER** means a fuel pathway applicant that has received a certified fuel pathway carbon intensity based on site-specific data, including a Provisional fuel pathway.

(sss) **FUEL PRODUCTION FACILITY** means a facility at which fuel is produced, however, with respect to biomethane-to-vehicle fuel pathways, it can mean a facility at which fuel is upgraded, purified, or processed to meet standards for injection to a natural gas common carrier pipeline or for use in natural gas vehicles.

(ttt) **FUEL REPORTING ENTITY** means an entity that is required to report fuel transactions in CFS Online. Fuel reporting entity refers to the first fuel reporting entity and to any entity to whom the reporting entity status is passed for a given quantity of fuel.

(uuu) **FULL FUEL CYCLE** means accounting for the efficiency and environmental impact of fuel consumption from the point of fuel production or extraction to its final end use.

(vvv) **FULL FUEL-CYCLE CARBON INTENSITY** means the measure of carbon intensity consumed in the following processes: energy feedstock (or primary energy) production; feedstock transportation and storage; fuel production; fuel transportation, storage, and distribution; and vehicle operations that involve fuel combustion or other chemical conversions.

(www) **GASOLINE** means a fuel suitable for spark ignition engines and conforming to the specifications of ASTM D4814.

(xxx) **GREENHOUSE GAS** means a gaseous compound that absorbs infrared radiation, traps heat in the atmosphere, and contributes to the greenhouse effect. The primary greenhouse gases in Earth's atmosphere are water vapor, carbon dioxide, methane, nitrous oxide and ozone.

(yyy) **HARBOR VESSEL** means any commercial or government vessel including, but not limited to, passenger ferries, excursion vessels, tugboats, ocean-going tugboats, towboats, push-boats, crew and supply vessels, work boats, pilot vessels, supply boats, fishing vessels, research vessels, hovercraft, emergency response harbor craft, and barge vessels that do not otherwise meet the definition of ocean-going vessels or recreational vessels.

(zzz) **HEAVY-DUTY VEHICLE** means a vehicle that is rated at or greater than 14,001 pounds gross vehicle weight rating (GVWR).

(aaaa) **HIGHLY IMPACTED COMMUNITIES** means communities defined by the Washington Clean Energy Transformation Act (CETA; Engrossed Second Substitute Senate Bill 5116, 2019) or identified using the Washington Environmental Health Disparities Map.

(bbbb) **IMPORTER** means the entity that owns the transportation fuel or blendstock, in the transportation equipment that held or carried the product, at the point the fuel entered the Agency's jurisdiction. For purposes of this definition, "transportation equipment" includes, but is not limited to, rail cars, cargo tanker trucks, and pipelines.

(cccc) **INDIRECT LAND USE CHANGE** means the average life cycle greenhouse gas emissions caused by an increase in land area used to grow crops that is caused by increased use of crop-based transportation fuels, and expressed as grams of carbon dioxide equivalent per megajoule of energy provided (gCO_2e/MJ). Land use change is calculated using the protocol developed by the California Air Resources Board.

(dddd) **LIFE CYCLE GREENHOUSE GAS EMISSIONS** means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions, such as significant emissions from land use changes), as determined by the Agency, related to the full fuel life cycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

(eeee) **LIGHT-DUTY VEHICLE** means a vehicle that is rated at 8,500 pounds or less GVWR.

(ffff) **LIQUEFIED COMPRESSED NATRURAL GAS (L-CNG)** means LNG that has been liquefied and transported to a dispensing station where it was then re gasified and compressed to a pressure greater than ambient pressure.

(gggg) **LIQUEFIED NATURAL GAS (LNG)** means natural gas that has been liquefied.

(hhhh) **LIQUEFIED PETROLEUM GAS** means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of them: propane, propylene, butanes (normal butane or iso-butane), and butylenes, and conforms to the specifications of ASTM D1835.

(iiii) **MEDIUM-DUTY VEHICLE** means a vehicle that is rated between 8,501 and 14,000 pounds GVWR.

(jjjj) **METERED ELECTRIC VEHICLE FUELING SUPPLY EQUIPMENT (EV-FSE)** means electric vehicle charging equipment that is powered through a dedicated electric utility-owned meter, where such meter does not supply power to any equipment not used to charge vehicles.

(kkkk) **MOTOR VEHICLE** has the same meaning as defined in RCW 46.04.320.

(llll) **MULTI-FUEL VEHICLE** means a vehicle that uses two or more distinct fuels for its operation. A multi-fuel vehicle (also called a vehicle operating in blended-mode) includes a bi-fuel vehicle and can have two or more fueling ports onboard the vehicle. A fueling port can be an electrical plug or a receptacle for liquid or gaseous fuel. For example, most plug-in hybrid electric vehicles use both electricity and gasoline as the fuel source and can be "refueled" using two separately distinct fueling ports.

(mmmm) **MULTI-FAMILY RESIDENCE** means a structure or facility established primarily to provide housing that provides two or more living units, and where the individual park-

ing spaces that an electric vehicle FSE serves, and the FSE itself, are not deeded to or owned by a single resident.

(nnnn) **NATURAL GAS** means a mixture of gaseous hydrocarbons and other compounds, with at least 80 percent methane (by volume), and typically sold or distributed by utilities.

(oooo) **OCEAN-GOING VESSEL** means a commercial, government, or military vessel meeting any one of the following criteria:

(1) A vessel greater than or equal to 400 feet in length overall (LOA) as defined in 50 Code of Federal Regulations (CFR) § 679.2, as adopted June 19, 1996;

(2) A vessel greater than or equal to 10,000 gross tons (GT ITC) pursuant to the convention measurement (international system) as defined in 46 CFR § 69.51-.61, as adopted September 12, 1989;

(3) A vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.

(pppp) **ON-ROAD** means a vehicle that is designed to be driven on public highways and roadways and that is registered or is capable of being registered by the Washington Department of Licensing (DOL) or DOL's equivalent in another state, province, or country; or the International Registration Plan.

(qqqq) **OPT-IN FUEL REPORTING ENTITY** means an entity that meets the requirements of Section 5.02 and voluntarily opts in to be a fuel reporting entity and is therefore subject to the requirements set forth in this regulation.

(rrrr) **OPT-IN PROJECT** means a project approved for generating CFS credits by the Agency pursuant to Section 7.05.

(ssss) **PLUG-IN HYBRID ELECTRIC VEHICLE (PHEV)** means a hybrid electric vehicle with the capability to charge a battery from an off-vehicle electric energy source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.

(tttt) **PRODUCER** means, with respect to any fuel, the entity that made or prepared the fuel.

(uuuu) **PRODUCT TRANSFER DOCUMENT (PTD)** means a document that authenticates the transfer of ownership of fuel from a fuel reporting entity to the recipient of the fuel. A PTD is created by a fuel reporting entity to contain information collectively supplied by other fuel transaction documents, including bills of lading, invoices, agreements, meter tickets, rail inventory sheets, Renewable Fuels Standard (RFS) product transfer documents, etc.

(vvvv) **PROJECT OPERATOR** means an entity that registers an opt-in project in the Alternative Fuel Portal and has it approved for generating CFS credits.

(wwww) **PROPANE** means a heavy flammable gaseous alkane C_3H_8 found in crude petroleum and natural gas and used especially as a transportation fuel. Also known as liquefied petroleum gas.

(xxxx) **PROVISIONAL FUEL PATHWAY** means a Tier 1 or Tier 2 fuel pathway for a fuel production facility that has been in full commercial production for at least 90 days but less than 24 months, per Section 6.01 (d)(5).

(yyyy) **RACK** means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer. Also called "at the rack".

(zzzz) **REASONABLE ASSURANCE** means a high degree of confidence that submitted data and statements are valid.

(aaaaa) **REGISTERED ENTITY** means an entity that has registered in CFS Online.

(bbbbb) **RENEWABLE ENERGY CERTIFICATES (RECs)** are a market-based instrument that represents the property rights to the environmental, social and other non-power attributes of renewable electricity generation. RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource.

(ccccc) **REGULATED ENTITY** means an entity subject to any requirement pursuant to this regulation, including fuel reporting entities, credit generators and aggregators.

(ddddd) **RENEWABLE FUEL STANDARD** means the program administered by the United States Environmental Protection Agency under 40 CFR Part 80: Regulation of Fuels and Fuel Additives, Subparts K and M.

(eeeee) **RENEWABLE DIESEL** and **RENEWABLE HYDROCARBON DIESEL** mean a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and conforms to the specifications of ASTM D975.

(fffff) **RENEWABLE HYDROGEN** means hydrogen derived from (1) electrolysis of water or aqueous solutions using renewable electricity; (2) catalytic cracking or steam methane reforming of biomethane; or (3) thermochemical conversion of biomass, including the organic portion of municipal solid waste (MSW).

(ggggg) **RENEWABLE PROPANE** means liquefied petroleum gas (LPG or propane) that is produced from non-petroleum renewable resources.

(hhhhh) **REPORTING TOOL** and **CREDIT BANK AND TRANSFER SYSTEM (RT-CBTS)** means the component of CFS Online that is designed to support fuel transaction reporting, compliance demonstration, credit generation, banking, and transfers.

(iiiii) **SHORE POWER** means an off-vessel electric energy source that cannot be connected or coupled to the vessel in any manner while the vessel is underway.

(jjjjj) **SINGLE-FAMILY RESIDENCE** means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single-family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit (RCW 59.18.030). This definition includes duplexes.

(kkkkk) **SITE-SPECIFIC DATA** and **SITE-SPECIFIC INPUT** means an input value used in determination of fuel pathway carbon intensity value, or the raw operational data used to calculate an input value, which is required to be unique to the facility, pathway, and feedstock. All site-specific inputs must be measured, metered or otherwise documented, and verifiable, e.g., consumption of natural gas or grid electricity at a fuel production facility must be documented by invoices from the utility.

(llllll) **SPECIFIED SOURCE FEEDSTOCKS** means feedstocks that require the chain of custody evidence to be eligible for a reduced CI associated with the use of a waste, residue, by-product or similar material.

(mmmmm) **SUBSTITUTE PATHWAY** means a liquid fuel, other than gasoline or diesel, suitable for use as engine fuel.

(nnnnn) **TEMPORARY FUEL PATHWAY** means a fuel pathway for a fuel purchased with an indeterminate carbon intensity per Section 6.01 (d)(7). Such pathways may be used for up to two calendar quarters, subject to approval by the Agency. "Tier 1 Simplified CI Calculator" means a calculator available on CFS Online that provides automated calculations using factors from WA-GREET 3.0 for most first-generation fuels that are commonly produced.

(ooooo) **TOTAL OBLIGATED AMOUNT (TOA)** means the quantity of fuel for which the fuel reporting entity is the eligible credit or deficit generator. The CFS Online calculates the TOA for each fuel pathway code. TOA is calculated as the difference between the fuel reported using transaction types that increase the net quantity of fuel that generates credits or deficits in CFS Online and the fuel reported using transaction types that decrease the net quantity of fuel that generates credits or deficits in CFS Online.

(ppppp) **TOTAL AMOUNT (TA)** means the total quantity of fuel reported by a fuel reporting entity irrespective of whether the entity retained status as the credit or deficit generator for that specific fuel volume. TA is calculated as the difference between the fuel reported using transaction types that increase the net fuel quantity reported in CFS Online and fuel reported using transaction type that decrease the net fuel quantity reported in CFS Online.

(qqqqq) **TRANSACTION DATE** means the title transfer date as shown on the Product Transfer Document.

(rrrrr) **TRANSACTION QUANTITY** means the amount of fuel reported in a transaction. A Transaction Quantity must be reported in units in CFS Online.

(sssss) **TRANSACTION TYPE** means the nature of a fuel-based transaction as defined below:

(1) **eCHE FUELING** means providing fuel to electric cargo handling equipment.

(2) **eHV FUELING** means providing shore power to a harbor vessel at-berth.

(3) **eOGV FUELING** means providing shore power to an ocean-going vessel at-berth.

(4) **eTRU FUELING** means providing fuel to electric transport refrigeration units.

(5) **EV CHARGING - UTILITY NAME** means providing electricity to recharge EVs using the utility specific fuel pathway code for a given year.

(6) **EXPORT** means any fuel reported in CFS Online that is subsequently delivered outside of the Agency's jurisdiction and is not used for transportation in the Agency's jurisdiction.

(7) **FIXED GUIDEWAY ELECTRICITY FUELING** means fueling light rail, heavy rail, cable car, street car, and trolley bus, or exclusive right-of-way bus operations with electricity.

(8) **FORKLIFT ELECTRICITY FUELING** means providing fuel to electric forklifts.

(9) **FORKLIFT HYDROGEN FUELING** means providing fuel to hydrogen forklifts.

(10) **FUEL CELL VEHICLE (FCV) FUELING** means the dispensing of hydrogen at a fueling station designed for fueling hydrogen fuel cell electric vehicles.

(11) **GAIN OF INVENTORY** means the fuel entered the Agency jurisdiction's fuel pool due to a volume gain.

(12) **IMPORT** means the transportation fuel was produced outside of the Agency's jurisdiction and later brought by any entity other than its producer into the Agency's jurisdiction for use in transportation.

(13) **LOSS OF INVENTORY** means the fuel entered the Agency jurisdiction's fuel pool but was not used due to volume loss.

(14) **NGV FUELING** means the dispensing of natural gas at a fueling station designed for fueling natural gas vehicles.

(15) **NOT USED FOR TRANSPORTATION** means a transportation fuel was reported with compliance obligation under the CFS but was later not used for transportation purposes in the Agency's jurisdiction or otherwise determined to be exempt.

(16) **PRODUCTION FOR IMPORT** means the transportation fuel was produced outside of the Agency's jurisdiction and imported into the Agency's jurisdiction for use in transportation.

(17) **PROPANE FUELING** means the dispensing of propane at a fueling station designed for fueling propane vehicles.

(18) **PURCHASED WITH OBLIGATION** means the transportation fuel was purchased from a separate fuel reporting entity with the obligation to claim credits or deficits in CFS Online.

(19) **PURCHASED WITHOUT OBLIGATION** means the transportation fuel was purchased from a separate fuel reporting entity without obligation to claim credits or deficits in CFS Online.

(20) **SOLD WITH OBLIGATION** means the transportation fuel was sold by a fuel reporting entity with the obligation to claim credits or deficits in CFS Online.

(21) **SOLD WITHOUT OBLIGATION** means the transportation fuel was sold by a fuel reporting entity without obligation to claim credits or deficits in CFS Online.

(ttttt) **TRANSPORTATION FUEL** means any fuel used or intended for use as a motor vehicle fuel or for transportation purposes in a non-vehicular source.

(uuuuu) **USED COOKING OIL (UCO)** means fats and oils originating from commercial or industrial food processing operations, including restaurants that have been used for cooking or frying. Feedstock characterized as UCO must contain only fats, oils, or greases that were previously used for cooking or frying operations. UCO must be characterized as "processed UCO" if it is known that processing has occurred prior to receipt by the fuel production facility or if evidence is not provided to the Agency to confirm that it is "unprocessed UCO."

(vvvvv) **WA-GREET 3.0** means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) model developed by ICF, based on CA-GREET 3.0 with modifications to adapt for Washington State.

Reviser's note: The spelling error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 2.02 Acronyms for Purposes of the CFS

(a) **ASTM** means ASTM International (formerly the American Society for Testing and Materials).

(b) **AFP** means Alternative Fuel Portal.

(c) **BEV** means battery electric vehicles.

(d) **CARB** means the California Air Resources Board.

(e) **CCM** means Credit Clearance Market.

(f) **CETA** means the Washington Clean Energy Transformation Act, also known as Engrossed Second Substitute Senate Bill 5116, 2019.

(g) **CFR** means Code of Federal Regulations.

(h) **CFS** means Clean Fuel Standard.

(i) **CI** means carbon intensity.

(j) **CNG** means compressed natural gas.

(k) **CO_2e** means carbon dioxide equivalent.

(l) **DOL** means the Washington State Department of Licensing.

(m) **eCHE** means Electric Cargo Handling Equipment.

(n) **EER** means energy economy ratio.

(o) **eHV** means electric power for Harbor Vessel.

(p) **eOGV** means Electric Power for Ocean-going Vessel.

(q) **eTRU** means electric transport refrigeration unit.

(r) **EV** means electric vehicle.

(s) **FCV** means fuel cell vehicle.

(t) **FEIN** means Federal Employer Identification Number.

(u) **FPC** means fuel pathway code.

(v) **FSE** means fueling supply equipment.

(w) **gCO_2e/MJ** means grams of carbon dioxide equivalent per megajoule.

(x) **GVWR** means gross vehicle weight rating.

(y) **H_2** means hydrogen.

(z) **HDV** means heavy-duty vehicles.

(aa) **HDV-CIE** means a heavy-duty vehicle compression-ignition engine.

(bb) **HDV-SIE** means a heavy-duty vehicle spark-ignition engine.

(cc) **HHV** means higher heating value.

(dd) **ICEV** means internal combustion engine vehicle.

(ee) **ILUC** means indirect land use change.

(ff) **kWh** means kilowatt hours.

(gg) **LDV** means light-duty vehicles.

(hh) **L-CNG** means liquefied compressed natural gas.

(ii) **LNG** means liquefied natural gas.

(jj) **LPG** means liquefied petroleum gas.

(kk) **MCON** means marketable crude oil name.

(ll) **MDV** means medium-duty vehicles.

(mm) **MJ** means megajoules.

(nn) **MT** means metric tons of carbon dioxide equivalent.

(oo) **NG** means natural gas.

(pp) **NGV** means a natural gas vehicle.

(qq) **ODEQ** means the Oregon Department of Environmental Quality.

(rr) **OEM** means original equipment manufacturer.

(ss) **PHEV** means plug-in hybrid vehicles.

(tt) **REC** means Renewable Energy Certificate.

(uu) **RFS** means the Renewable Fuel Standard.

(vv) **RNG** means renewable natural gas or biomethane.

(ww) **RT-CBTS** means Reporting Tool and Credit Bank and Transfer System.

(xx) **SMR** means steam methane reformation.

(yy) **UCO** means used cooking oil.

(zz) **U.S. EPA** means the United States Environmental Protection Agency.

Article 3: Carbon Intensity Reduction Benchmarks and Compliance Schedules

SECTION 3.01 Transportation Fuel Pool Reduction Benchmarks

For the purpose of reducing GHG emissions and preventing air pollution, the full fuel-cycle carbon intensity of the transportation fuel pool used in the Agency's jurisdiction will be reduced by 25 percent below 2016 levels by 2030. To achieve this reduction, annual carbon intensity reduction benchmarks and compliance schedules required for gasoline, diesel, and fuels used as their substitutes, as well as reduction benchmarks for Alternative Jet Fuel, are as follows:

(a) Reduction Benchmarks for Gasoline and Fuels used as a Substitute for Gasoline.

Table 1. CFS Carbon Intensity Reduction Benchmarks and Compliance Schedule for 2021 to 2030 for Gasoline and Fuels Used as a Substitute for Gasoline

Year	Average Carbon Intensity (gCO_2e/MJ)	Percent Reduction
2021	100.73	Reporting Only
2022	99.47	1.25
2023	98.21	2.5
2024	96.95	3.75
2025	94.43	6.25
2026	91.92	8.75
2027	88.14	12.5
2028	84.36	16.25
2029	80.58	20
2030 and beyond	75.55	25

(b) Reduction Benchmarks for Diesel Fuel and Fuels used as a Substitute for Diesel Fuel.

Table 2. CFS Carbon Intensity Reduction Benchmarks and Compliance Schedule for 2021 to 2030 for Diesel Fuel and Fuels Used as a Substitute for Diesel Fuel

Year	Average Carbon Intensity (gCO_2e/MJ)	Percent Reduction
2021	99.76	Reporting Only
2022	98.51	1.25
2023	97.27	2.5
2024	96.02	3.75
2025	93.53	6.25

Year	Average Carbon Intensity (gCO_2e/MJ)	Percent Reduction
2026	91.03	8.75
2027	87.29	12.5
2028	83.55	16.25
2029	79.81	20
2030 and beyond	74.82	25

(c) Reduction Benchmarks for Alternative Jet Fuel

Table 3. CFS Carbon Intensity Reduction Benchmarks and Compliance Schedule for 2021 to 2030 and beyond for Alternative Jet Fuel

Year	Average Carbon Intensity (gCO_2e/MJ)
2021	Reporting Only
2022	90.28
2023	90.28
2024	90.28
2025	90.28
2026	90.28
2027	87.47
2028	83.72
2029	79.97
2030 and beyond	74.97

(d) Carbon Intensity Reduction Benchmarks for an Alternative Fuel Other Than a Biomass-Based Diesel Fuel Intended for Use in a Vehicle.

(1) The Agency will use the reduction benchmarks for gasoline set forth in Section 3.01(a) for credit and deficit calculations for any alternative fuel, other than biomass-based diesel fuel, if the alternative fuel is used or intended to be used in any single-fuel light- or medium-duty vehicle.

(2) The Agency will use the reduction benchmarks for diesel fuel set forth in Section 3.01(b) for credit and deficit calculations for any alternative fuel, other than biomass-based diesel fuel, that is used or intended to be used in any single-fuel application not identified in Section 3.01 (d)(1).

(e) Carbon Intensity Reduction Benchmarks for Biomass-Based Diesel Fuel. The reduction benchmark for diesel fuel, set forth in Section 3.01(b) applies to biomass-based diesel fuel used or intended to be used in any:

(1) light-, medium-, or heavy-duty vehicle;

(2) off-road transportation application;

(3) off-road equipment application;

(4) intrastate locomotive or commercial harbor craft application; or

(5) non-stationary source application not otherwise specified in Sections 3.01 (e)(1) through (4).

(f) Carbon Intensity Reduction Benchmarks for Transportation Fuels Intended for Use in Multi-Fuel Vehicles.

(1) The Agency's credit and deficit calculations involving alternative fuel provided for use in a multi-fueled vehicle use:

(A) The reduction benchmarks for gasoline set forth in Section 3.01(a) if one of the fuels used in the multi-fuel vehicle is gasoline; or

(B) The reduction benchmarks for diesel fuel set forth in Section 3.01(b) if one of the fuels used in the multi-fuel vehicle is diesel fuel.

Article 4: Applicable and Opt-In Fuels and Exemptions

SECTION 4.01 Applicability of a Clean Fuel Standard for Transportation Fuels

Except as provided in Section 4.04, the CFS applies to any transportation fuel, as defined in Section 2.01, that is sold, supplied, or offered for sale in the Agency's jurisdiction. The CFS also applies to any fuel reporting entity, as defined in Section 2.01, that is responsible for reporting a transportation fuel in a compliance year.

SECTION 4.02 Applicable Transportation Fuels

The transportation fuels to which the CFS applies include:

(a) Gasoline used as a transportation fuel;

(b) Diesel fuel used as a transportation fuel;

(c) Ethanol used as a transportation fuel;

(d) Biodiesel used as a transportation fuel;

(e) Renewable hydrocarbon diesel used as a transportation fuel;

(f) Fossil compressed natural gas ("Fossil CNG"), fossil liquefied natural gas ("Fossil LNG"), or fossil liquefied compressed natural gas ("Fossil L CNG) used as a transportation fuel;

(g) Liquefied petroleum gas used as a transportation fuel;

(h) Any blend of the above fuels; and

(i) Any other liquid or non-liquid fuel not listed in section 4.02 used as a transportation fuel.

SECTION 4.03 Opt-In Transportation Fuels

Each of the following opt-in fuels is presumed to have a full fuel life cycle carbon intensity that meets the compliance schedules set forth in Section 3.01. A fuel provider for an alternative fuel listed below may generate CFS credits for that fuel only by electing to opt into the CFS as an opt-in fuel reporting entity pursuant to Section 5.02 and meeting the requirements of this regulation:

(a) Electricity used as a transportation fuel;

(b) Bio-CNG used as a transportation fuel;

(c) Bio-LNG used as a transportation fuel;

(d) Hydrogen used as a transportation fuel;

(e) Alternative Jet Fuel used as a transportation fuel; and

(f) Renewable Propane used as a transportation fuel.

SECTION 4.04 Exemptions for Specific Fuel Applications

The CFS does not apply to any transportation fuel used in the following applications:

(a) Inter-state locomotives;

(b) Ocean-going vessels, as defined in Section 2.01;

(c) Aircraft;

(d) Military tactical vehicles and tactical support equipment;

(e) Small volume fuel producers. A transportation fuel supplied for use in the Agency's jurisdiction if the producer documents that:

(1) The producer has an annual production volume of less than 10,000 gallons of liquid fuel per year; or

(2) The producer uses the entire volume of fuel produced in motor vehicles used by the producer directly and has an annual production volume of less than 50,000 gallons of liquid fuel; or

(3) The producer is a research, development or demonstration facility.

(f) Fuels used in small volumes. A single type of transportation fuel supplied for use in the Agency's region if the producer or importer documents that all providers supply an aggregate volume of less than 360,000 gallons of liquid fuel per year.

Article 5: Regulated and Opt-in Entities

SECTION 5.01 Fuel Reporting Entities

The purpose of this section is to identify the fuel reporting entities and the credit or deficit generator for each type of transportation fuel. The first fuel reporting entity is responsible for initiating reporting within CFS Online for a given quantity of fuel and, by default, also holds the status as first credit or deficit generator for the reported fuel quantity. The fuel reporting entities identified in this section are subject to the reporting requirements pursuant to Sections 8.01 through 8.04 and to any other requirement applicable to a fuel reporting entity and credit or deficit generator under this section.

(a) For Liquid Fuels. Liquid fuels refer to fossil fuels (including gasoline, diesel, and conventional jet fuel), liquid alternative fuels (including ethanol, biomass-based diesel, and alternative jet fuels), and blends of liquid alternative and fossil fuels.

(1) Designation of First Fuel Reporting Entities for Liquid Fuels. The first fuel reporting entity for liquid fuels is the producer or importer of the liquid fuel. For liquid fuels that are a blend of liquid alternative fuel components and a fossil fuel, the first fuel reporting entity is the following:

(A) With respect to the alternative fuel component, the producer or importer of the alternative fuel component.

(B) With respect to the fossil fuel component, the producer or importer of the fossil fuel component.

(C) Specifics for Alternative Jet Fuel. For an alternative jet fuel or the alternative fuel portion of a blend with conventional jet fuel, the first fuel reporting entity is the producer or importer of the alternative jet fuel, which is delivered to a storage facility where fuel is stored before it is uploaded to an aircraft in the Agency's jurisdiction. Conventional jet fuel, including the conventional jet fuel portion of a blend, is not subject to the CFS and does not need to be reported.

(2) In the Case of Transfer of Fuel Ownership. An entity transferring ownership of fuel is the "transferor" and an entity acquiring ownership of fuel is the "recipient." An entity can retain its status as a credit or deficit generator for a given amount of liquid fuel, while transferring the ownership of the fuel, if the conditions set forth in Sections 5.01 (a)(2)(A) and (B) are met by the time ownership of fuel is transferred, and if the two entities indicate by written agreement that the recipient accepts all CFS responsibilities of a fuel reporting entity and the transferor retains the responsibilities as a fuel reporting entity and credit or deficit generator. An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel, with the ownership of the fuel, if the conditions set forth in Sections 5.01 (a)(2)(A) through (D) are met by the time ownership of fuel is transferred, and if the two entities indicate by written agreement that the recipient accepts all CFS responsibilities of a fuel reporting entity and credit or deficit generator. If such a transfer occurs, the recipient also becomes the fuel reporting entity for the fuel while the transferor is still subject to reporting requirements pursuant to Section 8.02 and to any other requirement applicable to a fuel reporting entity under this section.

(A) The transferor must provide the recipient a product transfer document that prominently states the information specified in Section 8.04(b).

(B) An entity acquiring ownership of fuel below the rack is not required to report the fuel transaction in CFS Online unless it is a fuel exporter pursuant to Section 5.01 (a)(4).

(C) In the case of a deficit generating fuel, the transferor and recipient of deficit generating fuels must meet the requirements specified in Sections 7.01 through 7.07.

(D) The credit or deficit generator status cannot be passed to a downstream entity acquiring ownership of liquid fuel below the rack.

(3) Transfer Period. For all liquid fuels, the period in which credit or deficit generator status can be transferred to another entity, for a given amount of fuel, is limited to three calendar quarters. This means that, for example, if an entity receives title to a fuel along with credit or deficit generator status in the first calendar quarter, the status as credit or deficit generator for that amount of fuel can be transferred to another entity no later than the end of the third calendar quarter. After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(4) Designation of Fuel Exporter. Entities responsible for reporting exports of fuel that has been previously reported in CFS Online are identified in Section 5.01 (a)(4)(A) through (C):

(A) When the fuel is sold or delivered above the rack for export, the entity holding title to the fuel as it crosses the Agency jurisdiction's border on its way toward the first point of sale/delivery is responsible for reporting the export in CFS Online.

(B) When the fuel is sold across the rack for export, the entity holding title to the fuel as the fuel crosses the rack is responsible for reporting the export in CFS Online.

(C) When the fuel is diverted out of the Agency's jurisdiction below the rack, the entity holding title to the fuel, as it crosses the Agency jurisdiction's border, is responsible for reporting the export in CFS Online.

(b) For Gaseous Fuels. Gaseous fuels refer to natural gas fuels (including CNG, LNG and L-CNG), propane, and hydrogen.

(1) Designation of First Fuel Reporting Entities for Gaseous Fuels. The first fuel reporting entity for different gas-

eous fuels is identified in Sections 5.01 (b)(1)(A) through (D). For gaseous fuels, Section 5.01 (b)(2) provides entities the ability to contractually designate another entity as the first fuel reporting entity for a given amount of gaseous fuel.

(A) Bio-CNG. For bio-CNG, including the bio-CNG portion of a blend with fossil CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(B) Bio-LNG. For bio-LNG, including the biomethane portion of any blend with fossil LNG and L-CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(C) Renewable Propane. For renewable propane, including the renewable propane portion of a blend with fossil propane, the first fuel reporting entity is the producer or importer of the renewable propane.

(D) Fossil CNG, LNG, and L-CNG and Propane. For fossil CNG, LNG, L-CNG, and propane, including the fossil portion of any blend with a renewable fuel component, the first fuel reporting entity is the entity that owns the fueling equipment through which the fossil fuel is dispensed to motor vehicles for transportation use.

(2) Sections 5.01 (b)(1)(A) through (D) notwithstanding, an entity may elect not to be the first fuel reporting entity for a given gaseous fuel, provided another entity has contractually agreed to be the first fuel reporting entity for the fuel on its behalf. In such cases the two entities must agree in writing that:

(A) The original first fuel reporting entity per Sections 5.01 (b)(1)(A) through (D) will not generate credits or deficits in the CFS and will instead provide the amount of fuel dispensed, and other required information pursuant to Sections 5.01, 5.02, and 8.02 to the contractually designated entity for the purpose of CFS reporting and credit or deficit generation.

(B) The contractually designated entity accepts all responsibilities and obligations of compliance with the CFS as the first fuel reporting entity and as a credit or deficit generator, as applicable.

SECTION 5.02 Opt-in Entities

(a) Eligibility. An entity that meets one or more of the following criteria, and complies with registration and reporting criteria in Sections 8.01 through 8.04, may opt into the CFS program, thereby becoming a credit generator.

(1) Opt-in Fuel Reporting Entity. A qualified fuel reporting entity that provides a fuel specified in Section 4.03 and meets the requirements of this section wherever applicable;

(2) Project Operators. An entity that has a project approved for crediting or is applying for approval by the Agency under Section 7.05 will apply to opt into the CFS program as a credit generator.

(b) Opting in Procedure. The procedure for opting into CFS for such an entity is set forth as follows:

(1) Opting into the CFS program becomes effective when the opt-in entity establishes an account in CFS Online, pursuant to Section 8.01, with the exception of the effective date for electric utilities per Section 5.02 (e)(1)(B). The opt-in entity may not report and generate credits and deficits based on transactions that precede the quarter in which the entity opted in.

(2) Establishing an account in CFS Online under Section 5.02 (b)(1) means that the entity understands the requirements of the CFS and has agreed to be subject to all the requirements and provisions of the CFS.

(c) Opting Out Procedure. An opt-in entity may opt out of the CFS program.

(1) To opt out, an entity must complete all actions specified in Sections 5.02 (c)(1)(A) through (C):

(A) Provide to the Agency a notice of intent to opt out and a proposed effective opt-out date 90 days prior to the proposed opt-out date.

(B) Submit in the CFS Online any outstanding quarterly fuel transactions or project reports up to the quarter in which the effective opt-out date falls and a final annual compliance report (covering the calendar year through the opt-out date); and

(C) Identify in the notice of intent of any actions to be taken to eliminate any remaining deficits by the effective opt-out date.

(2) Opt-Out Approval. The Agency will notify the opt-in entity of the final "approval" status of the opt-out request. Any credits that remain in the opt-in entity's account at the time of the effective opt-out date will be forfeited and placed in the buffer account, and the opt-in entity's account in CFS Online will be closed.

(d) Hydrogen. The credit generator for hydrogen is the entity that owns the fueling supply equipment ("hydrogen station owner") through which hydrogen fuel is dispensed to motor vehicles for transportation use, except for hydrogen used to power forklifts.

(1) For hydrogen used to power forklifts, the forklift fleet owner may generate the credits. If the fleet owner chooses to not opt-in, the fleet operator may opt-in as the credit generator.

(e) For Electricity Used as a Transportation Fuel.

(1) Residential EV Charging. For electricity used to charge an electric vehicle at single-family and multi-family residences, with the exception of metered EV FSEs at multi-family residences that are registered in CFS Online, electric utilities (utility hereafter) can opt-in as the credit generator. In order to generate credits for the following year, a utility must register in CFS Online by October 1 of the current year as a credit generator. Sections 5.02 (e)(1)(A) through (C) determine the requirements of how credits are utilized by the utility.

(A) Credit revenue must be utilized to achieve additional benefits beyond those required by any other statute, regulation, or legal requirement.

(B) Scope of Work and Annual Compliance Report. The utility must provide a detailed scope of work by October 1 of the year prior to credit generation for the portion of credits detailed in Section 5.02 (e)(1)(C)(vi). The Agency will consider input by a Community Advisory Group prior to making a final decision on whether to approve the scope of work. The final decision on the proposed scope of work will be issued in accordance with Section 9.01 procedures. The Utility must also include in its annual compliance report a description, per Agency specifications, of how credit revenue was utilized for the calendar year per Section 5.02 (e)(1)(C).

(C) The utility must utilize credit revenue through the mechanisms in Sections 5.02 (e)(1)(C)(i) through (vi) with a focus on benefiting current or future electric vehicle drivers and highly impacted communities, maximizing co-benefits, and transitioning utility customers to electric transportation options. The utility has the option to achieve these requirements through cooperative agreements with other utilities, nonprofit organizations, or the Equity Credit Aggregator.

(i) Increase and improve electric transportation charging infrastructure, including increases in grid capacity and related technology and infrastructure necessary for this purpose; or

(ii) Implement distribution planning and demand side management to support transportation electrification; or

(iii) Increase awareness of the basics and benefits of electric transportation through outreach, education, and marketing campaigns; or

(iv) Provide time of sale or time of lease rebates for used and new battery plug-in electric vehicles; or

(v) Any combination of Sections (i) through (iv).

(vi) At least 35 percent of credit revenue must be spent by the utility on any combination of Sections (i) through (iv) within highly impacted communities in its service area.

(D) Community Advisory Group. A Community Advisory Group will consist of representatives appointed by the Agency to represent the needs and interests of highly impacted communities within a utility's service area.

(2) For non-residential charging. For electricity used to charge an electric vehicle at non-residential locations, such as in public, for a fleet, or at a workplace, Section 5.02 (e)(2)(A) determines the entity that is eligible to generate credits.

(A) The owner of the electric FSE may opt-in and generate the credits. If the electric FSE owner does not opt-in, they may designate another entity to be the credit generator, if the two entities agree in writing that:

(i) The electric FSE owner will not generate credits and will instead provide the electricity data to the designated entity for CFS Online reporting.

(ii) The designated entity accepts all CFS reporting responsibilities as the fuel reporting entity and credit generator.

(3) Public Transit. For electricity used to power electric buses or fixed guideway vehicles such as light rail systems, streetcars, and aerial trams, a transit agency may generate the credits based on metered kilowatt hours. The transit agency must have an active registration approved by the Agency under Section 8.01.

(A) If the transit agency does not opt-in to generate the credits, then the electric utility that is providing the electricity is eligible to generate the credits.

(B) At least 35 percent of credit revenue must be spent by the transit agency on increasing availability of electric transit options within highly impacted communities.

(4) Electric Forklifts. For electricity used to power forklifts, the forklift fleet owner may generate the credits. If the fleet owner chooses to not opt-in, the fleet operator may opt-in as the credit generator.

(5) Electric Transportation Refrigeration Units (eTRU). For eTRUs, the terminal operator may generate the credits. If the terminal operator chooses to not opt-in, they may designate another entity to opt-in as the credit generator.

(6) Electric Cargo Handling Equipment (eCHE). For eCHEs, the terminal operator may generate the credits. If the terminal operator chooses to not opt-in, they may designate another entity to opt-in as the credit generator.

(7) Electric Power for Ocean Going Vessels (eOGV) and Harbor Vessels (eHV). For eOGVs and eHVs, the owner of the charging infrastructure for shore power may generate the credits. If the owner of the charging infrastructure chooses to not opt-in, they may designate another entity to opt-in as the credit generator.

(8) Equity Credit Aggregator. The Equity Credit Aggregator serves as the credit generator of electricity credits that have not been claimed under Sections 5.02 (e)(1) through (7).

(A) To qualify to submit an application to be the Equity Credit Aggregator, an organization must:

(i) Be an organization exempt from federal taxation under Section 501 (c)(3) of the U.S. Internal Revenue Code;

(ii) Have a mission and operations aligned with the purpose of the Clean Fuel Standard.

(B) An entity that wishes to be the Equity Credit Aggregator must submit an application with the Agency in response to an Agency competitive process. The Equity Advisory Committee will provide input on the selection of the Equity Credit Aggregator and on the annual Scope of Work.

(i) An Equity Advisory Committee will consist of representatives appointed by the Agency to represent equity and environmental justice needs and interests of the Agency's jurisdiction.

(C) The Agency will designate an Equity Credit Aggregator for a term of three years. Upon the expiration of the three-year term, the Agency may hold a new selection process to appoint an Equity Credit Aggregator for future years.

Article 6: Establishing Fuel Pathways

SECTION 6.01 Establishing Carbon Intensity for Gasoline, Diesel, and Substitute Pathways

(a) Regulated parties, credit generators and aggregators must use the carbon intensities listed in Table 4 for the following fuels:

(1) Clear gasoline or the gasoline blendstock of a blended gasoline fuel;

(2) Clear diesel or the diesel blendstock of a blended diesel fuel;

(3) Fossil CNG;

(4) Fossil LNG; and

(5) LPG.

(b) Except as provided in Sections 6.01 (a) and (c), regulated entities, credit generators, and aggregators may use a carbon intensity that:

(1) CARB has certified for use in the California Low Carbon Fuel Standard program, or that ODEQ has certified in the Oregon Clean Fuels Program, as adjusted for fuel transportation distances and indirect land use change (see Table 5), and that has been reviewed and approved by the Agency as being consistent with WA-GREET 3.0; or

(2) Matches the description of a fuel pathway listed in the Carbon Intensity Lookup Table (Table 4). Entities seek-

ing to generate credits under the fuel pathways in the Lookup Table do not need to submit a fuel pathway application.

(A) For hydrogen produced using biomethane or renewable power, the producer of the hydrogen must demonstrate to the Agency that the lookup table value is appropriate for its production facility and must submit attestations on an annual basis that the renewable power and biomethane attributes, as applicable, were not claimed in any other program except for the federal RFS.

(c) WA-GREET 3.0. Carbon intensities for fuels must be calculated using WA-GREET 3.0 or a model approved by the Agency, except as provided in Section 6.01(b). If an entity wishes to use a modified or different life cycle carbon intensity model, the model must be approved by the Agency in advance of an application. The final decision on the proposed model will be issued in accordance with Section 9.01 procedures.

(1) Primary alternative fuel pathway classifications utilizing a specified source feedstock. If it is not possible to identify an applicable carbon intensity under either Section 6.01(b) or Table 4 then the regulated entity, credit generator, or aggregator has the option to develop its own fuel pathway and apply for it to be certified under this section. Applicants must maintain chain-of-custody evidence detailed in Section 6.01 (c)(2). Fuel pathway applications utilizing specified source feedstocks fall into one of two tiers:

(A) Tier 1. Conventionally-produced alternative fuels of a type that has been well-evaluated in the California Low Carbon Fuel Standard. Tier 1 fuels include:

(i) Starch, cellulosic, and sugar-based ethanol;

(ii) Biodiesel produced from conventional feedstocks (plant oils, corn/sorghum fiber, tallow and related animal wastes, and used cooking oil);

(iii) Renewable diesel produced from conventional feedstocks (plant oils, tallow and related animal wastes and used cooking oil);

(iv) Fossil Natural Gas; and

(v) Biomethane from landfills; anaerobic digestion of dairy and swine manure or wastewater sludge; and food, vegetative or other organic waste.

(B) Tier 2. All fuels not included in Tier 1 including but not limited to:

(i) Cellulosic alcohols;

(ii) Biomethane from other sources;

(iii) Hydrogen pathways not found in the Lookup Table;

(iv) Electricity pathways not found in the Lookup Table;

(v) Renewable hydrocarbons other than renewable diesel produced from conventional feedstocks;

(vi) Renewable biogenic feedstocks co-processed at a petroleum refinery

(vii) Alternative Jet Fuel;

(viii) Renewable propane; and

(ix) Tier 1 fuels produced using innovative methods, or a process that cannot be accurately modeled using a Tier 1 Simplified CI Calculator.

(2) Chain-of-custody Evidence. Fuel pathway applicants using specified source feedstocks must maintain either (1) delivery records that show shipments of feedstock type and quantity directly from the point of origin to the fuel production facility, or (2) information from material balance or energy balance systems that control and record the assignment of input characteristics to output quantities at relevant points along the feedstock supply chain between the point of origin and the fuel production facility. Chain-of-custody evidence is used to demonstrate proper characterization and accurate quantity. Chain-of-custody evidence must be provided to the Agency upon request. Joint Applicants may assume responsibility for different portions of the chain-of-custody evidence but each such entity must meet the following requirements to be eligible for a pathway that utilizes a specified source feedstock:

(A) Maintain records of the type and quantity of feedstock obtained from each supplier, including Feedstock transaction records, Feedstock Transfer Documents, weighbridge tickets, bills of lading or other documentation for all incoming and outgoing feedstocks.

(B) Maintain records used for material balance and energy balance calculations.

(C) Ensure Agency staff access to audit feedstock suppliers to demonstrate proper accounting of attributes and conformance with certified CI data.

(d) Obtaining a Carbon Intensity.

Fuel producers can apply to obtain a carbon intensity by following the applicable process below:

(1) Applicants seeking approval to use a carbon intensity that is currently certified by CARB or ODEQ must submit to the Agency in CFS Online:

(A) The application package submitted to CARB or ODEQ;

(B) The CARB or ODEQ-approved Tier 1 or Tier 2 current GREET calculator, and the WA-GREET 3.0 equivalent with the fuel transportation and distribution cells modified for that fuel's pathway to the Agency's jurisdiction, with a list of all modifications;

(C) The CARB or ODEQ pathway summary for the certified fuel pathway;

(D) Any other supporting materials relating to the pathway, as requested by the Agency; and

(E) If the applicant is seeking to use a provisional pathway certified by CARB or ODEQ, then the applicant must submit to the Agency in CFS Online documentation it provides to CARB or ODEQ, and as required in this section the applicant must provide the Agency within fourteen days:

(i) Any additional documentation it has submitted to CARB or ODEQ; and

(ii) A notification of any changes to the status of its CARB or ODEQ-certified provisional pathway.

(2) Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit to the Agency in CFS Online the following information:

(A) Entity name and full mailing address.

(B) Entity contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website address.

(C) Fuel Production Facility name (or names if more than one facility is covered by the application).

(D) Facility address (or addresses if more than one facility is covered by the application).

(E) U.S. EPA Facility ID for facilities covered by the RFS program.

(F) Facility geographical coordinates using latitude/longitude in the WGS 1984 coordinate system (for each facility covered by the application). The coordinates must be in decimal degree format.

(G) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, and email address.

(H) Facility nameplate production capacity in million gasoline gallon equivalents per year (for each facility covered by the application).

(I) Consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website URL.

(J) Declaration whether the applicant is applying for a carbon intensity for a Tier 1 or Tier 2 fuel.

(3) In addition to the items required in this section, applicants seeking to obtain a carbon intensity for a Tier 1 application using a Tier 1 simplified CI calculator must submit to the Agency in CFS Online the following:

(A) The applicable simplified calculator with all necessary inputs completed, following the instructions in the applicable manual for that calculator;

(B) The invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all co-products sold for the most recent 24 months of full commercial production, along with a summary of those invoices and receipts; and

(C) The most recent RFS third party engineering report, if one has been conducted for the facility.

(4) In addition to the items required in Section 6.01 (d)(2), applicants seeking to obtain a carbon intensity for a Tier 2 fuel using the full WA-GREET 3.0 model must submit to the Agency in CFS Online the following:

(A) The invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all co-products sold for the most recent 24 months of full commercial production, and a summary of those invoices and receipts;

(B) A completed Tier 2 model;

(C) Process flow diagrams that depict the complete fuel production process;

(D) Applicable air permits issued for the facility;

(E) A copy of the RFS third party engineering report, if available;

(F) A copy of the RFS fuel producer co-products report; and

(G) A life cycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report must contain sufficient detail to allow the Agency to replicate the carbon intensity the applicant calculated. The applicant must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(5) Applicants seeking a provisional carbon intensity. Application requirements for a provisional carbon intensity are the same as for a Tier 1 or Tier 2 pathway application. If a fuel production facility has been in full commercial production for at least 90 days but less than 24 months, it can apply for a provisional carbon intensity. If the Agency determines that the provisional carbon intensity is higher or lower than the actual operational carbon intensity, per Sections 6.01 (d)(5)(B) through (D), the Agency will provide the fuel pathway holder with written notice of its decision in accordance with Section 9.01 procedures.

(A) The applicant must submit to the Agency in CFS Online operating records covering all periods of full commercial operation in accordance with this section.

(B) At any time before the facility reaches a full 24 months of full commercial production, the Agency may revise as appropriate the operational carbon intensity based on the required ongoing submittals or other information it learns.

(C) If, after a facility has been in full commercial production for more than 24 months, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, the Agency will replace the certified carbon intensity with the operational carbon intensity in CFS Online and adjust the credit balance accordingly.

(D) If, after a facility has been in full commercial production for more than 24 months, the facility's operational carbon intensity is lower than the certified carbon intensity, the Agency may re-certify at the lower carbon intensity. The new carbon intensity will be used from the date of the re-certification forward but will not retroactively generate credits.

(6) Applicants employing co-processing at a petroleum refinery. Applicants employing co-processing of biogenic feedstocks at a petroleum refinery, that are not seeking approval to use a carbon intensity that is currently certified by CARB or ODEQ, must submit to the Agency in CFS Online all information required under Sections 6.01 (d)(2) and (4). If the Agency determines that a modification is required per Section 6.01 (d)(6)(B) or a carbon intensity adjustment is required per Section 6.01 (d)(6)(C), the Agency will provide the fuel pathway holder with written notice of its decision in accordance with Section 9.01 procedures.

(A) For the renewable diesel or renewable gasoline portion of the fuel, the applicant must also submit:

(i) The planned proportions of biogenic feedstocks to be processed;

(ii) A detailed methodology for the attribution of biogenic feedstocks to the renewable products; and

(iii) The corresponding carbon intensities from each biogenic feedstock, as determined by WA-GREET 3.0.

(B) The attribution methodology must be approved by the Agency prior to its use and may be modified at the Agency's discretion based on ongoing quarterly reporting of production data at the refinery.

(C) The Agency may adjust the carbon intensities applied for under this section as it determines is appropriate.

(7) Temporary Fuel Pathway Codes for Fuels with Indeterminate Carbon Intensities. A regulated entity or credit generator that has purchased a fuel without a carbon intensity must submit a request to the Agency for permission to use a temporary fuel pathway code found in Table 6.

(A) The request must:

(i) Be submitted within 45 calendar days of the end of the calendar quarter for which the applicant is seeking to use a temporary fuel pathway code; and

(ii) Explain and document that the production facility is unknown or that the production facility is known but there is no certified fuel pathway code.

(B) Temporary fuel pathway codes may be used for up to two calendar quarters. If more time is needed to obtain a carbon intensity, the entity that obtained the temporary fuel pathway must submit an additional request to the Agency for an extension of the authorization to use a temporary fuel pathway code.

(C) If the Agency grants a request to use a temporary fuel pathway code through issuance of an Administrative Order specified in Section 9.01, credits and deficits may be generated subject to the quarterly reporting provisions in 8.01 and 8.02.

(8) Approval process to use carbon intensities for fuels other than electricity.

(A) For applications proposing to use CARB or ODEQ-certified fuel pathways, including provisional pathways, the Agency will:

(i) Confirm that the proposed fuel pathway is consistent with WA-GREET 3.0; and

(ii) Review the materials submitted under this section.

(B) For applications proposing to use the Tier 1 or Tier 2 calculators, the Agency may approve the application if it can:

(i) Replicate the calculator outputs; and

(ii) Verify the energy consumption and other inputs.

(C) If the Agency has approved or denied the application for a carbon intensity, the Agency will notify the applicant of its determination, in accordance with Section 9.01 procedures.

(D) The Agency may impose conditions in its certification of the carbon intensity. Conditions may include specific limitations, recordkeeping or reporting requirements, adherence to protocols to assure carbon reduction claims, or operational conditions that the Agency determines should apply to assure the ongoing accuracy of the certified carbon intensity. Failure to meet those conditions may result in the carbon intensity certification being revoked.

(i) For applicants seeking a provisional pathway:

(I) The Agency will specify the conditions used to establish the pathway.

(II) The applicant must submit to the Agency in CFS Online copies of receipts for all energy purchases each calendar quarter, per requirements in Sections 8.02 (b)(1) and (2) until two full calendar years of commercial production receipts are submitted; and

(III) The applicant may generate credits by submitting quarterly transaction reports, per reporting requirements in Sections 8.02 (b)(1) and (2).

(ii) For applicants employing co-processing at a petroleum refinery:

(I) The Agency will specify the conditions regarding the quantities of biogenic feedstocks and the amount of energy and hydrogen used to establish the pathway; and

(II) The applicant must submit to the Agency in CFS Online the quantities of biogenic feedstocks and the amount of energy and hydrogen used in each calendar quarter per reporting requirements in Sections 8.02 (b)(1) and (2).

(iii) For a CARB or ODEQ-certified fuel pathway that the Agency has approved for use in the Agency's jurisdiction, if at any time the pathway's certification is revoked by CARB or ODEQ then the fuel pathway holder must inform the Agency within 7 calendar days of the revocation and provide the Agency with documentation related to that decision. Upon Agency request, the fuel pathway holder must provide to the Agency additional documentation. The Agency may at its discretion revoke its approval of the pathway's use in the Agency's jurisdiction at any time. If CARB or ODEQ modifies its certification of the pathway then the fuel pathway holder must notify the Agency of the modification not later than 14 days after CARB or ODEQ's modification and must provide to the Agency any accompanying documentation the fuel pathway holder received from CARB or ODEQ. Based on the underlying facts that led to CARB or ODEQ's modification of the pathway's status, the Agency may modify its certification, take no action, or revoke its certification and will provide the fuel pathway holder with written notice of its decision, in accordance with Section 9.01 procedures.

(E) The producer of any fuel that has received a carbon intensity under Section 6.01 must register with CFS Online.

(F) If the Agency determines the application for the carbon intensity has not met the criteria in this section, the Agency will notify the applicant that the application is denied and identify the basis for the denial, in accordance with Section 9.01 procedures.

(9) Completeness determination process.

(A) For Tier 1 or Tier 2 applications, the Agency will determine whether the application is complete after receiving a registration application.

(B) If the Agency determines the application is complete, the Agency will notify the applicant in writing of the completeness determination, in accordance with Section 9.01 procedures.

(C) If the Agency determines the application is incomplete, the Agency will notify the applicant of the deficiencies, in accordance with Section 9.01 procedures.

Table 4. Carbon Intensity Look-Up Table

Fuel	Pathway Code	Pathway Description	Total Life Cycle Carbon Intensity (gCO_2e/MJ)
Gasoline	PSGAS001	Clear gasoline, based on a weighted average of gasoline supplied to the Puget Sound.	101.60
	PSGAS002	Blended gasoline (E10) - 90% clear gasoline & 10% ethanol with a CI (88.9 gCO_2e/MJ) from CA LUT for Midwest sorghum.	100.73
Diesel	PSULSD001	Clear diesel, based on a weighted average of clear diesel fuel supplied to the Puget Sound.	99.96
	PSULSD002	Clear diesel blended with current level of biodiesel, 0.5%, with a CI (58.28 gCO_2e/MJ) from OR LUT for Midwest soybean biodiesel.	99.76
Compressed Natural Gas	PSCNG001	North American NG delivered via pipeline; compressed in the Puget Sound	79.98
Liquefied Natural Gas	PSLNG001	North American NG delivered via pipeline; liquefied in the Puget Sound using liquefaction with 80% efficiency	86.88
Liquefied Petroleum Gas	PSLPG001	Liquefied petroleum gas	80.88
Electricity	PSELEC100	Solar power produced at or directly connected to the site of the charging station in the Puget Sound.	0
	PSELEC101	Wind power, produced at or directly connected to the site of the charging station in the Puget Sound.	0
Hydrogen	PSHYF	Compressed H2 produced in the Puget Sound from central steam methane reformation of North American fossil-based NG	120.68
	PSHYFL	Liquefied H2 produced in the Puget Sound from central steam methane reformation of North American fossil-based NG	157.29
	PSHYB	Compressed H2 produced in the Puget Sound from central steam methane reformation of biomethane (renewable feedstock) from North American landfills	116.76
	PSHYBL	Liquefied H2 produced in the Puget Sound from central steam methane reformation of biomethane (renewable feedstock) from North American landfills	149.70
	PSHYER	Compressed H2 produced in the Puget Sound from electrolysis using solely solar- or wind-generated electricity	13.11

Table 5. Indirect Land Use Change Values for Use in CI Determination

Biofuel	iLUC (gCO_2e/MJ)
Corn Ethanol	19.8
Sugarcane Ethanol	11.8
Soy Biomass-Based Diesel	29.1
Canola Biomass-Based Diesel	14.5
Grain Sorghum Ethanol	19.4
Palm Biomass-Based Diesel	71.4

Table 6. Temporary and Indeterminate Fuel Pathway Code Lookup Table

Fuel	Feedstock	Process Energy	Pathway Code	CI (gCO_2e/MJ)
Ethanol	Corn	Grid electricity, natural gas, and/or renewables	PSETH100T	90.00
	Sorghum	Grid electricity, natural gas, and/or renewables	PSETH101T	95.00
	Sugarcane and Molasses	Bagasse and straw only, no grid electricity	PSETH102T	57.09
	Any starch or sugar feedstock	Any	PSETH103T	100.14
	Any Cellulosic Biomass	Grid electricity, natural gas, and/or renewables	PSETH104T	50.00
Biodiesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	PSBIOD200T	47.30
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	PSBIOD201T	65.03
	Any other feedstock	Any	PSBIOD202T	99.96
Renewable Diesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	PSRNWD300T	39.26
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	PSRNWD301T	56.55
	Any other feedstock	Any	PSRNWD3O2T	99.96
Biomethane CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	PSCNG500T	70
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	PSCNG5O1T	50
Biomethane LNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	PSLNG5O1T	85
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	PSLNG5O2T	65
Biomethane L-CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	PSLCNG5O2T	90
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	PSLCNG5O3T	70
Biomethane CNG, LNG, L-CNG	Dairy Manure	Grid electricity, natural gas, and/or parasitic load	PSLCNG5O4T	-150
Electricity	Coal, Natural Gas, Hydro-electric Dams, Wind Mills, etc.	Washington	PSELEC600T	150.47

Fuel	Feedstock	Process Energy	Pathway Code	CI (gCO_2e/MJ)
Any Gasoline Substitute Feedstock-Fuel Combination Not Included Above	Any	Any	PSSG800T	101.6
Any Diesel Substitute Feedstock-Fuel Combination Not Included Above	Any	Any	PSSD801T	99.96

SECTION 6.02 Establishing Carbon Intensity for Electricity Pathways

(a) Utility-specific carbon intensity. The Agency will establish a utility-specific carbon intensity that reflects the average carbon intensity of electricity served in that utility district.

(1) The carbon intensity will be calculated using the average carbon intensity of electricity served in the utility's district over each of the most recent three years and determining the average of the three values.

(2) Once the Agency has calculated a utility-specific carbon intensity, the Agency will propose the carbon intensity to the utility. If the utility contests the Agency's carbon intensity, it must contest the determination in writing within thirty calendar days of receiving the Agency's proposal. The utility must provide a detailed explanation of why it believes the Agency's carbon intensity determination is not accurate. The Agency will notify the utility in writing of its determination, in accordance with Section 9.01 procedures.

(b) For on-site generation of electricity using renewable generation systems such as solar or wind:

(1) Applicants must document that the renewable generation system is directly supplying electricity used for transportation;

(2) The fuel pathway codes listed in Table 4 for solar-generated or wind-generated electricity can only be used for the portion of the electricity used for transportation that is generated by that dedicated renewable energy system;

(3) Any grid electricity dispensed for transportation must be reported separately using the utility-specific fuel pathway code; and

(4) Renewable Energy Certificates (RECs) are not generated from the renewable generation system or, if they are, then an equal number of RECs generated from that facility to the number of MWh reported in CFS Online from that facility must be retired in the REC tracking system. Evidence of REC retirements is required.

Article 7: Credits and Deficits

SECTION 7.01 Credit and Deficit Basics

(a) Carbon intensities

(1) When calculating credits or deficits, regulated entities, credit generators, and aggregators must use a carbon intensity certified by the Agency under Section 6.01 or 6.02.

(2) If a regulated entity, credit generator, or aggregator has a provisional carbon intensity certified under Section 6.01 (d)(5), the regulated entity, credit generator, or aggregator must use the Agency-certified provisional carbon intensity.

(3) If a regulated entity, credit generator, or aggregator has a certified temporary carbon intensity under Section 6.01 (d)(7), the regulated entity, credit generator, or aggregator must use the temporary carbon intensity for the period which it has been certified, unless the Agency has subsequently certified a final carbon intensity for that fuel.

(4) If a registered entity purchases a blended finished fuel for which the seller does not provide carbon intensity information, and that fuel is exported, not used for transportation, or used in an exempt fuel use, the registered entity must use the applicable substitute fuel pathway code in Table 4. If the finished fuel blend is not listed in Table 4, the registered entity must report the volume using the applicable lookup table fuel pathway code for the fossil fuel component in Table 4 and the applicable substitute fuel pathway code for the biofuel component(s) in Table 6.

(b) Fuel quantities. Regulated entities, credit generators, and aggregators must express fuel quantities in the established unit for each fuel (Table 7).

(c) Compliance period. The annual compliance period is January 1 through December 31 of each year.

(d) Metric tons of CO_2 equivalent. Regulated entities, credit generators, and aggregators must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(e) Deficit and credit generation.

(1) Credit generation. A credit is generated on the basis of fuel sold, supplied, or offered for sale in the Agency's jurisdiction, as applicable, if the carbon intensity of the fuel certified for use under Sections 6.01 and 6.02 is less than the carbon intensity reduction benchmarks identified in Section 3.01 for gasoline and gasoline substitutes in Table 1, for diesel fuel and diesel substitutes in Table 2, or for alternative jet fuel in Table 3. Credits are generated when a valid and accurate quarterly report is submitted in CFS Online.

(2) Deficit generation. A deficit is generated on the basis of fuel sold, supplied, or offered for sale in the Agency's jurisdiction, as applicable, if the carbon intensity of the fuel certified for use under Sections 6.01 or 6.02 is greater than the carbon intensity reduction benchmarks identified in Sec-

tion 3.01 for gasoline and gasoline substitutes in Table 1 or for diesel fuel and diesel substitutes in Table 2. Deficits are generated when a valid and accurate quarterly report is submitted in CFS Online.

(3) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed, unless the credits are being generated for residential charging of electric vehicles.

(f) Mandatory retirement of credits. When filing the annual report at the end of a compliance period, a registered entity that possesses credits must retire a sufficient number of credits such that:

(1) Enough credits are retired to completely meet the registered entity's compliance obligation for that compliance period, or

(2) If the total number of the registered entity's credits is less than the total number of the regulated entity's deficits, the registered entity must retire all of its credits.

(g) Buffer Account. The Agency may create a Buffer Account under the control of the Agency. In this account, the Agency may place:

(1) An equivalent number of credits for any CFS credits that could have been claimed (or deficits that could have been eliminated) if reported on time, if not for the prohibition on retroactive credit claims in Section 7.01(h).

(2) An equivalent number of credits representing the difference between the reported CI and the verified operational CI from annual Fuel Pathway Reports.

(3) All net credits remaining in any deactivated RT-CBTS accounts.

(h) No Retroactive Credit Claim. Unless expressly provided elsewhere in this subarticle, no regulated entity may generate or claim credits or eliminate deficits retroactively for a period for which the reporting deadline has passed.

SECTION 7.02 Transacting Credits

(a) General.

(1) Credits are a regulatory instrument pursuant to the CFS and do not constitute personal property, instruments, securities or any other form of property.

(2) For purposes of the CFS, regulated entities, credit generators, and aggregators may:

(A) Retain credits without expiration within CFS Online in compliance with the Agency; and

(B) Acquire or transfer credits from or to other regulated entities, credit generators, and aggregators that are registered under Section 8.01.

(3) For purposes of the CFS, regulated entities, credit generators, and aggregators may not:

(A) Borrow or use anticipated credits from future projected or planned carbon intensity reductions.

(b) Credit transfers between registered entities.

(1) "Credit seller," as used in this regulation, means a registered entity that sells or transfers credits.

(2) "Credit buyer," as used in this regulation, means a registered entity that acquires credits.

(3) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(4) A credit seller may only transfer credits up to the number of credits in the credit seller's CFS Online account on the date of the transfer.

(c) Credit seller requirements. When entities wish to transfer credits, the credit seller must initiate an online "Credit Transfer Form" provided in CFS Online and must include the following:

(1) The date on which the credit buyer and credit seller reached their agreement;

(2) The names and FEINs of the credit seller and credit buyer;

(3) The first and last names and contact information of the persons who performed the transaction on behalf of the credit seller and credit buyer;

(4) The number of credits proposed to be transferred; and

(5) The price or equivalent value of the consideration (in US dollars) to be paid per credit proposed for transfer, excluding any fees.

(d) Credit buyer requirements. Within 10 days of receiving the "Credit Transfer Form" from the credit seller in CFS Online, the credit buyer must confirm the accuracy of the information therein and may accept the credit transfer by signing and dating the form using CFS Online.

(e) If the credit seller and credit buyer have not fulfilled the requirements of Sections 7.02 (c) and (d) within 20 days of the seller initiating the credit transfer, the transaction is void. If a transaction has been voided, the credit buyer and credit seller may initiate a new credit transfer.

(f) Aggregator. An aggregator may only act as a credit seller or credit buyer if that aggregator:

(1) Has an approved and active registration under Section 8.01; and

(2) Has an approved Aggregator Designation Form from a regulated entity or credit generator for whom the aggregator is acting in any given transaction.

(g) Invalid credits.

(1) A registered entity must report accurately when it submits information into CFS Online. If inaccurate information is submitted that results in the generation of one or more credits when such an assertion is inconsistent with the requirements of Sections 7.01 through 7.05, or an entity's submission otherwise causes credits to be generated in violation of the regulations of the Agency, those credits are invalid. If the Agency determines that one or more credits that an entity has generated are invalid:

(A) If the registered entity that generated the invalid credits still holds them in its account, the Agency will cancel those credits;

(B) If the registered entity that generated the invalid credits has retired those credits to meet its own compliance requirement or if it has transferred them to another entity, the entity that generated the invalid credits must retire a valid credit to replace each invalid credit; and

(C) The entity that generated the invalid credits is also subject to enforcement for the violation of the Agency's regulation.

(2) Acquisition of invalid credits. If the initial generator of the invalid credits has not retired approved credits in place of the invalid credits, the entity that has acquired such credits may have those credits canceled by the Agency if the entity

still holds the credits in its account. If the entity has used such invalid credits to meet its own compliance requirement, then the Agency may require the entity to retire an approved credit to replace each such invalid credit that it retired to meet its compliance obligation.

(h) Prohibited credit transfers.

(1) A credit transfer involving, related to, in service of, or associated with any of the following is prohibited:

(A) Fraud, or an attempt to defraud or deceive using any device, scheme or artifice;

(B) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the credits being transferred. A fact is material if it is reasonably likely to influence a decision by another entity or by the Agency.

SECTION 7.03 Fuels to Include in Credit and Deficit Calculation

(a) Fuels included. Regulated entities and credit generators must calculate credits and deficits for all applicable fuels and opt-in fuels, as described in Sections 4.02 and 4.03, except for electricity used in residential charging of electric vehicles.

(b) Fuels exempted. Except as provided in Section 4.03, credits and deficits may not be calculated for fuels exempted under Section 4.04.

(c) Fuels that are exported from Agency's jurisdiction. Any bulk quantity fuel that is exported must be reported by the entity that holds title to the fuel when it is exported. Exported fuels will not incur compliance obligations or generate credits, unless the exporter has purchased the fuel without the compliance obligation, or the credits or deficits have already been generated and separated from the fuel such as through a transfer without obligation, or if the fuel was imported in one quarter and exported in the next. In those cases, the exporter will incur credits or deficits, as appropriate, to balance out the deficits or credits detached from the fuel.

(d) Alternative jet fuel. Alternative jet fuel may be reported by the producer or importer of the fuel and any registered entities that hold title to it, so long as the fuel is loaded into planes in the Agency's jurisdiction. If alternative jet fuel that has been reported as imported or produced is later exported, lost, or otherwise not used for transportation it will be reported as such.

SECTION 7.04 Calculating Credits and Deficits

(a) Regulated entities and credit generators will calculate credits and deficits for all fuels included in Section 7.03:

(1) Using credit and deficit basics as directed in Section 7.01;

(2) Calculating the Fuel Energy (FE) in megajoules (MJ) by multiplying the amount of fuel by the energy density of the fuel in Table 7;

$$FE(MJ) = \text{fuel amount (units)} \times \text{fuel energy density (MJ/unit of fuel)}$$

Where the fuel amount units are gallons, therms, kilograms, or kilowatt hours.

(3) Calculating the Fuel Adjusted Energy (FAE) in megajoules by multiplying the Fuel Energy (FE) in megajoules from Section 7.04 (a)(2) by the Energy Economy Ratio (EER) of the fuel listed in Table 8, as applicable;

$$FAE(MJ) = FE\ (MJ) \times \text{Fuel EER}$$

(4) Calculating the Carbon Intensity Difference (CID) by subtracting the fuel's carbon intensity, pursuant to Section 6.01 or 6.02, that has been adjusted for the fuel application's EER listed in Table 8 as applicable, from the applicable carbon intensity (CI) reduction benchmark for gasoline or gasoline substitutes listed in Table 1, diesel fuel and diesel substitutes listed in Table 2, or alternative jet fuel listed in Table 3, as applicable;

$$CID\ \left(\frac{gCO_2e}{MJ}\right) = CI\ Standard_{year}\left(\frac{gCO_2e}{MJ}\right) - \left(\text{Fuel CI}\left(\frac{gCO_2e}{MJ}\right)/\text{Fuel EER}\right)$$

(5) Calculating the grams of carbon dioxide equivalent (gCO_2e) by multiplying the Fuel Adjusted Energy (FAE) in megajoules from Section 7.04 (a)(3) by the Carbon Intensity Difference (CID) from Section 7.04 (a)(4);

$$gCO_2e = FAE\ (MJ) \times CID\ \left(\frac{gCO_2e}{MJ}\right)$$

(6) Calculating the metric tons of carbon dioxide equivalent ($MTCO_2e$) by dividing the grams of carbon dioxide equivalent calculated in Section 7.04 (a)(5) by 1,000,000;

$$MTCO_2e = gCO_2e\ /1{,}000{,}000$$

and

(7) Per Section 7.01(e), if the result calculated in Section 7.04 (a)(6) is a positive number, credits are generated; if the result is a negative number, deficits are generated.

(b) For electricity used in residential charging of electric vehicles, credit calculations will be based on the total electricity dispensed (in kilowatt hours) to vehicles.

(1) The Agency quarterly will calculate the total electricity dispensed as a transportation fuel by multiplying the total number of BEVs and PHEVs in a utility's service territory based on Washington State Department of Licensing records, or another data source identified by the Agency, by an estimate of the average amount of electricity consumed by BEVs and PHEVs, per vehicle, at residential chargers, based on regional or national data.

(2) A credit generator or aggregator may propose an alternative method, separate from the method described in Section 7.04 (b)(1), for the calculation of credits for residential electric vehicle charging. The proposal is subject to the approval of the Agency, as specified in Section 9.01.

(3) If the Agency determines after the issuance of credits for residential electric vehicle charging that the estimate under Section 7.04 (b)(1) contained a significant error that led to one or more credits being incorrectly generated, the error will be corrected by withholding an equal number of credits to the erroneous amount from the next quarter's generation of residential electric vehicle credits.

(4) Credits generated under Section 7.04 (b)(1) will be issued quarterly into the CFS Online account of the utility or the Equity Credit Aggregator if the utility does not opt-in.

Table 7. Energy Density of Fuels

Fuel (established unit)	MJ/unit
Gasoline (gallon)	122.48 (MJ/gallon)
Diesel fuel (gallon)	134.48 (MJ/gallon)
Compressed natural gas (therm)	105.5 (MJ/therm)
Electricity (kilowatt hour)	3.60 (MJ/kilowatt hour)
Denatured ethanol (gallon)	81.51 (MJ/gallon)
Clear biodiesel (gallon)	126.13 (MJ/gallon)
Liquefied natural gas (gallon)	78.83 (MJ/gallon)
Hydrogen (kilogram)	120.00 (MJ/kilogram)
Liquefied petroleum gas (gallon)	89.63 (MJ/gallon)
Renewable hydrocarbon diesel (gallon)	129.65 (MJ/gallon)
Undenatured anhydrous ethanol (gallon)	80.53 (MJ/gallon)
Alternative Jet Fuel (gallon)	126.37 (MJ/gallon)

Table 8. Energy Economy Ratio (EER) for Fuels Used in Light, Medium, and Heavy Duty Applications

Light/Medium-Duty Applications (Fuels used as gasoline replacement)		*Heavy-Duty/Off-Road Applications (Fuels used as diesel replacement)*		*Aviation Applications (Fuels used as jet fuel replacement)*	
Fuel/Vehicle Combination	***EER Relative to Gasoline***	***Fuel/Vehicle Combination***	***EER Relative to Diesel***	***Fuel/ Vehicle Combination***	***EER Relative to Conventional Jet***
Gasoline (incl. E6 and E10) Or E85 (and other ethanol blends)	1	Diesel fuel Or Biomass-based diesel blends	1	Alternative Jet Fuel	1
CNG/ICEV	1	CNG or LNG (Spark-Ignition Engines)	0.9		
		CNG or LNG (Compression-Ignition Engines)	1		
Electricity/BEV, or PHEV	3.4	Electricity/BEV or PHEV* Truck or Bus	5.0		
		Electricity/Fixed Guideway, Heavy Rail	4.6		
		Electricity/Fixed Guideway, Light Rail	3.3		
On-Road Electric Motorcycle	4.4	Electricity/Trolley Bus, Cable Car, Street Car	3.1		
		Electricity Forklifts	3.8		
		eTRU	3.4		
		eCHE	2.7		
		eOGV	2.6		

Light/Medium-Duty Applications (Fuels used as gasoline replacement)		*Heavy-Duty/Off-Road Applications (Fuels used as diesel replacement)*		*Aviation Applications (Fuels used as jet fuel replacement)*	
Fuel/Vehicle Combination	***EER Relative to Gasoline***	***Fuel/Vehicle Combination***	***EER Relative to Diesel***	***Fuel/ Vehicle Combination***	***EER Relative to Conventional Jet***
H2/FCV	2.5	H2/FCV	1.9		
		H2 Fuel Cell Forklifts	2.1		
Propane	1.0	Propane	0.9		

SECTION 7.05 Project Based Credits

(a) Refineruy Investment Credit Program. A refinery may receive credit for reducing greenhouse gas emissions from its facility. Any such credits will be based on fuel volumes sold, supplied, or offered for sale in the Agency's jurisdiction as set forth below:

(1) General Requirements.

(A) A "refinery investment credit project" must occur within the boundaries of the refinery.

(B) The applicant must demonstrate that any net increases in criteria air pollutant or toxic air contaminant emissions from the refinery investment credit project are mitigated in accordance with all local, state, and federal environmental and health and safety regulations.

(C) The following project types are eligible for the refinery investment project credits:

(i) Use of lower-CI process energy from sources such as biomethane, renewable propane, and renewable coke, to displace fossil fuel;

(ii) Electrification at refineries that involves substitution of high carbon fossil energy input with grid electricity.

(iii) Process improvement projects that deliver a reduction in baseline refinery-wide greenhouse gas emissions as outlined in this section. Greenhouse gas emissions reductions due to curtailment, simple maintenance; and crude oil switching that results in greenhouse gas reductions in the project system boundary without improvements in the processing units or equipment involved are not eligible. For the purposes of this section, curtailment is defined as an intentional operational and/or physical change exclusively for the reduction or cessation of total gasoline and gasoline blendstocks and diesel production at the refinery. Curtailment does not include the coincidental rate reduction or shutdown of associated emitting equipment as part of a process improvement project or projects aimed primarily at optimizing refinery efficiency.

(D) Credits will be pro-rated for years when the units within a refinery investment credit project system boundary were non-operational. This pro-rating will consider the calendar days of operation relative to non-operation.

(E) Credits generated pursuant to Section 7.05 (a)(1)(C)(iii) are subject to the following limitations:

(i) Credits may not be used to meet more than 10 percent of any entity's annual compliance obligation.

(ii) Each project must generate at least 10,000 credits or one percent of the facility's annual pre-project emissions, whichever is less.

(iii) Crediting is limited to 15 years from the end of the calendar year in which the Agency approves the project's application, per Section 7.05 (a)(3).

(2) Calculation of Credits.

(A) For refinery investment credit projects, the credit generator must determine the credit as follows:

(i) Establish a project system boundary. The project system boundary should include direct impacts and at least first order indirect impacts;

(ii) Determine the credit for the refinery investment credit project by calculating pre-project life cycle greenhouse gas emissions and project life cycle greenhouse gas emissions within the project system boundary;

$$Credit_{RIP} = (GHG_{pre-project} - GHG_{post-project}) \times \frac{Volume^{XD}}{Volume^{Total}}$$

where:

$Credit_{RIP}$ is the annual credit for the refinery investment credit project in metric tons per year;

$GHG_{pre\text{-}project}$ is the annual life cycle greenhouse gas emissions from the use of fuels, electricity, steam/heat and hydrogen in the project system boundary prior to project implementation in metric tons per year corrected for downtime;

$GHG_{post\text{-}project}$ is the annual life cycle greenhouse gas emissions from the use of fuels, electricity, steam/heat and hydrogen in the project system boundary due to project implementation in metric tons per year corrected for downtime;

$Volume^{XD}$ is the volume of gasoline, gasoline blendstocks, and diesel in gallons per quarter or per year produced at the refinery and sold, supplied, or offered for sale in the Agency's jurisdiction by the refinery involved in the Refinery Investment Credit Program; and

$Volume^{Total}$ is the total volume of gasoline, gasoline blendstocks, and diesel in gallons produced at the refinery for the same time period used for $Volume^{XD}$.

(3) Application Contents and Submittal. Unless otherwise noted, an application submitted to the Agency for refinery investment credits must comply with the following requirements:

(A) Except as provided in Section 7.05 (a)(3)(F), an application must contain the following summary material:

(i) A complete description of the refinery investment credit project and how emissions are reduced;

(ii) An engineering drawing(s) and/or process flow diagram(s) that illustrates the project and clearly identifies the system boundaries, relevant process equipment, mass flows, and energy flows necessary to calculate the refinery investment credits, including any directly affected or indirectly affected processing units (at least first order indirect impacts), and a whole refinery diagram if requested; and

(iii) A preliminary estimate of the refinery investment credit including descriptions and copies of any available production and operational data including energy use and other technical documentation utilized in support of the calculation. The application must contain process-specific data showing that the reductions are part of the transportation fuel pathway.

(iv) Supporting documents demonstrating that second or higher order indirect impacts are not significant beyond the identified project system boundary.

(B) An application must include a list of references covering all information sources used in the calculation of refinery investment credit.

(C) An application must include all relevant documentation identifying any changes, including decreases or increases, in criteria air pollutant or toxic air contaminant emissions based on local air permits and supporting permit documentation from the refinery investment credit project.

(D) An application, supporting documents, and all other relevant data, calculations, and other documentation must be submitted electronically via CFS Online unless the Agency has approved or requested another format.

(E) Applications for process improvement projects pursuant to Section 7.05 (a)(1)(C)(iii) will be submitted on or before December 31, 2025.

(F) Applicants seeking credits for a project that is currently certified by CARB must provide a copy of the entire approved application package submitted to CARB.

(4) Application Approval Process. Before the refinery investment credit project can generate credits under the CFS, an application must be approved by the Agency.

(A) After receipt of an application, the Agency will advise the applicant in writing either that:

(i) The project system boundary is appropriate and the application is complete, or

(ii) The application is incomplete, in which case the Agency will identify which requirements have not been met. The applicant may submit additional information to correct deficiencies identified by the Agency.

(B) The Agency may prescribe conditions of approval that contain special limitations, recordkeeping and reporting requirements, and operational conditions that the Agency determines should apply to the project. If the Agency finds that an application does not meet the requirements of Sections 7.05 (a)(3)(A) through (E), the application will not be approved, and the applicant will be notified in writing, and the basis for the disapproval will be identified. Final determination on the application will be issued in accordance with Section 9.01.

(5) Credit Review and Issuance. Credits for refinery investment projects may be generated quarterly in a calendar year or annually, at the discretion of the credit generator.

(6) Recordkeeping. For each approved refinery investment credit project the refinery must compile and retain records pursuant to Section 8.04 showing compliance with all limitation and recordkeeping requirements.

SECTION 7.06 Demonstrating Compliance

(a) Compliance demonstration. Each regulated entity must meet its compliance obligations for the compliance period by demonstrating through submission of its annual compliance report that it possessed and has retired a number of credits from its account that is equal to its compliance obligation.

(b) Calculation of compliance obligation. A regulated entity's compliance obligation is the sum of deficits generated in the compliance period plus deficits carried over from the prior compliance period, represented in the following equation:

Compliance Obligation = Deficits Generated + Deficits Carried Over

(c) Calculation of credit balance.

(1) A regulated entity's credit balance is calculated using the following equation:

Credit Balance = (Credits Generated + Credits Acquired + Credits Carried Over) (Credits Retired + Credits Sold + Credits on Hold)

(d) Extended credit acquisition period. A regulated entity may acquire carryback credits between January 1st and March 31st to be used for meeting its compliance obligation for the prior compliance period. A regulated entity must complete all carryback credit transfers in CFS Online prior to submitting its annual report, but no later than April 30, in order for the credits to be valid for meeting the compliance obligation for that annual report's compliance period.

(e) Regulated entities that do not demonstrate compliance under this section may demonstrate compliance through participation in the Credit Clearance Market under Section 7.07.

SECTION 7.07 Credit Clearance Market

(a) If a regulated entity does not retire sufficient credits to meet its year end compliance obligation under Section 7.06, that entity must purchase its pro-rata share of credits in the Credit Clearance Market, if one occurs. Each year, the Agency will determine if a Credit Clearance Market is necessary.

(1) The credit clearance market is separate from the normal year-round market opportunities for entities to engage in credit transactions.

(2) A regulated entity is in compliance with Section 7.06(e) if the entity:

(A) Retires all credits in its CFS Online account.

(B) Acquires its pro-rata obligation in the credit clearance market and retires that number of credits by July 31st of the year subsequent to the compliance year in question; and

(C) Retires the remaining balance of its annual obligation, with interest, within five years.

(3) If no Credit Clearance Market occurs, the Agency will record any entity's unmet compliance obligation, and the fuel reporting entity will be deemed in compliance for that year, provided that it has retired all credits in its account, and retires credits equivalent to the Accumulated Deficits, with interest as explained in Section 7.07(e), within five years.

(b) Acquisition of Clearance Market Credits to Meet an Annual Compliance Obligation.

(1) Clearance Market Period. From June 1st to July 31st, a fuel reporting entity subject to Section 7.07(a) must acquire credits pledged into the Credit Clearance Market to be retired toward compliance in the previous compliance year. Credits

acquired for this purpose are defined as "Clearance Market" credits.

(2) Use of Clearance Market Credits. A Clearance Market credit can only be used for the purpose of meeting the fuel reporting entity's compliance obligation from an immediate prior year.

(c) Procedure for Selling in the Clearance Market.

(1) Pledging Credits for Sale into the Clearance Market. Regulated entities pledging credits for sale into the Clearance Market will report to the Agency in the annual compliance report (on or before April 30th) the number of credits they are pledging for sale.

(2) Calculation of the Maximum Price for Credits in the Clearance Market. The maximum price for credits acquired, purchased or transferred via the Credit Clearance Market will be set by the following formula:

(A) $200/credit (MT CO_2e) in 2022.

(B) This per credit price will be adjusted annually by the rate of inflation as measured by the most recently available twelve months of the Consumer Price Index for All Urban Consumers.

(3) Eligibility to Sell. Only regulated entities that demonstrated compliance pursuant to Section 7.06 for the prior year can pledge credits for sale into the Clearance Market. Regulated entities that have an Accumulated Deficit obligation cannot pledge credits for sale into the Clearance Market.

(4) Selling in the Clearance Market. By pledging credits for sale in the Clearance Market, entities agree to the following provisions:

(A) Entities pledging credits agree to withhold those credits from sale in the ongoing CFS credit market until the Agency determines whether a Clearance Market will occur and, if a Clearance Market will occur, until August 1st.

(B) The Agency will announce whether a Clearance Market will occur by May 15.

(C) If the Agency announces that a Clearance Market will not be held that year, entities that have pledged credits to the Clearance Market will be released from their agreement to withhold those credits from sale in the ongoing CFS credit market.

(D) If a Clearance Market does occur, entities will sell or transfer credits at or below the Maximum Price for the pertinent year, until the Clearance Market closes on July 31st.

(E) Entities that have pledged credits to sell into the Clearance Market cannot reject an offer to purchase pledged credits at the Maximum Price, provided they have not sold or contractually agreed to sell those pledged credits.

(d) Clearance Market Operation. The Agency will inform each regulated entity that failed to meet the Annual Compliance obligation under Section 7.06 of its pro-rata share of credits available into the Clearance Market by June 1st.

(1) Calculation of Pro-Rata Shares. Each regulated entity's pro-rata share of credits available in the Clearance Market will be calculated by the following formula:

Entity A's pro-rata share =

$$\left[\frac{(A's\ deficit)}{(total\ deficits)}\right] \times [lesser\ of: (pledged\ credits)\ or\ (total\ deficits)]$$

where:

deficit is entity A's obligation for the compliance year that has not been met pursuant to Section 7.06.

total deficits is the sum of all entities' obligations for the compliance year that have not been met pursuant to Section 7.06 and

pledged credits is the sum of all credits pledged pursuant to Section 7.07(c).

(2) Publishing a List of Entities Participating in the Clearance Market. The Agency may post the following information on CFS Online:

(A) The name of each entity that did not demonstrate compliance pursuant to Section 7.06 and the number of credits that each entity is obligated to acquire as its pro-rata share; and

(B) The name of each entity that has pledged to provide credits for sale in the credit clearance market and the number of credits that each entity has agreed to provide.

(3) Clearance Market Operation Period. If the Agency has determined that the Clearance Market will occur, the Clearance Market will operate from June 1st through July 31st.

(4) Submission of Amended Annual Compliance Reports. Regulated entities that purchased credits in the Clearance Market will submit to the Agency an amended annual compliance report by August 31st that accounts for the acquisition and retirement of their pro-rata share of Clearance Market credits, and for all deficits carried over as Accumulated Deficits.

(5) Accumulated Deficits. If, after purchasing its pro-rata share of credits and retiring those credits, a regulated entity retains an unmet compliance obligation, the Agency will record remaining deficits from that compliance year in the entity's account.

(e) Rules Governing Accumulated Deficits.

(1) Compound Interest on Accumulated Deficits. Regulated entities with an Accumulated Deficit, as defined in Section 7.07 (d)(5), will be charged interest to be applied annually to all deficits in a fuel reporting entity's account. Interest will be applied on Accumulated Deficits from previous compliance years in terms of additional deficits that will be retired at a rate of 5 percent annually, applied on each September 1st.

(2) Repayment of Accumulated Deficits. Regulated entities that participate in the Credit Clearance Market in order to meet their compliance obligations, and have accumulated deficits as defined in Section 7.07 (d)(5), must repay all deficits, plus interest no later than five years from the end of the compliance period in which any such deficit was incurred.

(3) Restrictions on the Repayment of Accumulated Deficits. Regulated entities may repay Accumulated Deficits as part of a subsequent annual report. However, no repayment of any Accumulated Deficits is allowed unless the regulated entity meets 100 percent of its current compliance obligation.

(4) Prohibitions on Credit Transfers. Regulated entities that have an Accumulated Deficit obligation cannot transfer or sell credits to another fuel reporting entity.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Article 8: Registration and Reporting Procedures

SECTION 8.01 CFS Online Registration

CFS Online refers to all the online systems responsible for CFS data management and program implementation. CFS Online comprises two interactive and secured web-based systems: Alternative Fuel Portal (AFP) and the CFS Reporting Tool and Credit Bank and Transfer System (RT-CBTS).

(a) Alternative Fuel Portal (AFP). The AFP supports fuel pathway applications and certifications. It also handles the registration of fuel production facilities and opt-in projects.

(1) Eligibility. Any entity that intends to be a fuel pathway applicant or an opt-in project operator can request to establish an account in the AFP.

(2) Requirements to Establish an Account in AFP. To establish an account in the AFP, an entity must complete and submit the online AFP account registration form and provide the following:

(A) Organization name, address, state and country, Organization Federal Employer Identification Number (FEIN), entity U.S. EPA ID, if available, facility location(s)

(B) A letter on entity letterhead stating the basis for qualifying for an account pursuant to Section 8.01 (a)(1). This letter must be signed by the entity owner, a president, a managing partner, or a corporate officer. An electronic copy of the signed letter must be uploaded in the AFP.

(C) The registrant must designate a primary account representative and at least one alternate account representative. The account representative must have the authority to bind the entity.

(D) For each account representative, name, title, relationship to the organization, business phone, e-mail address, username, and password.

(E) The account representatives can be changed by following the steps set forth in Sections 8.01 (a)(2)(B) through (D). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representatives prior to the time and date when the Agency receives the superseding information will be binding on the entity.

(3) Account Approval.

(A) The account is established when the Agency approves the application.

(B) An account registration application may be denied if any false, misleading, or missing information is supplied or submitted in the application.

(4) Account Management Roles and Duties.

(A) The account representative is responsible for making any changes to the entity profile within AFP.

(B) The account representative may designate users within the entity who can access and manage the account.

(C) If any information required by Section 8.01 (a)(2)(A) changes, the entity holding the account must update the account to reflect the changes within 30 calendar days.

(b) CFS Reporting Tool and Credit Bank & Transfer System (RT-CBTS). The RT-CBTS is designed to support fuel transaction reporting, compliance demonstration, credit generation, banking, and transfers.

(1) Eligibility. The following entities can request to establish an account in the RT-CBTS:

(A) A fuel reporting entity;

(B) An entity opting into CFS, pursuant to Section 5.02; or

(C) A CFS aggregator.

(2) Deadline to Establish an RT-CBTS Account.

(A) An entity responsible for reporting any transportation fuels pursuant to Section 5.01 must complete registration at least 30 days prior to the date for filing any required report.

(B) An opt-in entity can register anytime during a calendar year, except for utilities, which must register by October 1 of the year prior to generating credits. All quarterly and annual reporting is then required, beginning with the quarter in which registration was approved, and continuing until an opt-out is completed.

(C) Any aggregator must register in RT-CBTS prior to facilitating any CFS credit trades.

(3) Requirements to Establish an Account in RT-CBTS. An entity owner, a president, a managing partner, or a corporate officer with legal binding authority must complete and submit the online RT-CBTS account registration form and provide the following:

(A) Organization name, address, state and country, Organization Federal Employer Identification Number (FEIN), date and place of incorporation.

(B) A letter on entity letterhead stating the basis for qualifying for an account pursuant to Section 8.01 (b)(1). This letter must be signed by the entity owner, a president, a managing partner, or a corporate officer. An electronic copy of the signed letter must be uploaded in the RT-CBTS to complete the application process.

(C) The online RT-CBTS registration form must designate a primary account representative and at least one alternate account representative. The account representative must have the authority to bind the entity.

(D) For each representative, name, title, relationship to the organization, business and mobile phone, e-mail address, username, and password.

(E) The account representatives can be changed by following steps set forth in Sections 8.01 (b)(3)(B) through (D). Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representatives prior to the time and date when the Agency receives the superseding information will be binding on the entity.

(F) A designated fuel reporting entity pursuant to Section 5.01 (a)(2) or 5.01 (b)(2) must also provide a written agreement for each entity from which it acquired the first fuel reporting entity status, demonstrating that such status was acquired from such entity.

(4) CFS Credit Aggregator. An aggregator may represent other RT-CBTS account holders in CFS credit transfers. To

register an aggregator account, the aggregator must provide the following:

(A) Aggregator's organization name, address, state and country, Organization Federal Employer Identification Number (FEIN), date, and place of incorporation, if applicable.

(B) Aggregator's name, business and mobile phone, e-mail address, username, and password.

(5) Account Approval.

(A) The account is established when the Agency approves the application.

(B) Accounts may be invalidated by the Agency at any time if they contain false, misleading or incomplete information.

(6) Account Management Roles and Duties.

(A) The account representative is responsible for making any changes to the entity profile within RT-CBTS.

(B) The account representative may designate users within the entity who can access and manage the account.

(C) The account representative is responsible for meeting the reporting requirements as set forth in Section 8.02.

(D) If any information required by Sections 8.01 through 8.03 changes, the entity holding the account must update the account to reflect the changes within 30 calendar days.

(7) Account Closure.

(A) An RT-CBTS account is subject to suspension or closure based on any of the following:

(i) The account holder is no longer eligible to establish an RT-CBTS account pursuant to this Section.

(ii) The account holder fails to comply with requirements of this section; and

(iii) The account holder notified the Agency of its intent to opt out pursuant to Section 5.02(c).

(B) The account holder must provide a notice of intent to the RT-CBTS Administrator to close the account within 90 days after any condition in Section 8.01 (b)(7)(A). The entity must submit a final quarterly report for the quarter in which the notice was provided, submit a final annual report, and submit verification that any remaining deficits have been eliminated. The Agency will notify the entity of the final account closure. Any credits that remain in the entity's account at the time of the closure will be placed in the Buffer Account.

(C) Failure to provide notice pursuant to Section 8.01 (b)(7)(B) will result in account closure and forfeiture of any credits that remain in the entity's account at the time of closure.

(D) If an entity requests to reopen an RT-CBTS account that was previously closed, the entity must follow the requirements as set forth in Section 8.01(b) to reopen the account.

(8) Registration of Fueling Supply Equipment (FSE). After establishing an RT-CBTS account, fuel reporting entities for natural gas, metered electricity, propane, and hydrogen must register all fueling supply equipment in the RT-CBTS using the FSE registration template. The completed FSE registration template with supporting documents must be uploaded into the RT-CBTS. Upon FSE registration, the applicant will receive a unique CFS FSE ID that will be used for reporting fuel transactions in the RT-CBTS pursuant to Section 8.02. The following must be provided:

(A) General Requirements. All FSE registrations must include:

(i) Federal Employer Identification Number (FEIN) for the entity registering, name of the facility at which FSE is situated, street address, and geographical coordinates using latitude/longitude in the WGS 1984 coordinate system (in decimal degree format) of the FSE location.

(ii) Name and address of the entity that owns the FSE, if different from the entity registering the FSE.

(B) Specific Requirements by Fuel Type.

(i) For CNG, FSE refers to a fueling station associated with a utility meter. A CNG station with multiple dispensers is considered a single FSE. Fuel reporting entities for CNG must provide the natural gas utility meter number at the FSE location, name of the utility entity, and a copy of the most recent utility bill.

(ii) For LNG and propane, FSE refers to a fueling station. An LNG or propane station with multiple dispensers is considered a single FSE. Fuel reporting entities for LNG and propane must provide a unique identifier associated with the FSE used for their own fuel accounting or financial accounting or other purposes and copy of invoice or bill of lading for the most recent fuel delivery.

(iii) For non-residential EV charging, FSE refers to each piece of equipment capable of measuring the electricity dispensed for EV charging. Fuel reporting entities for non-residential EV charging for on-road applications must provide the serial number assigned to the FSE by the original equipment manufacturer (OEM) and the name of OEM. If there are multiple FSEs at the same location, each unique piece of equipment must be registered separately.

(iv) For electric forklifts, FSE refers to the facility or location where electricity is dispensed for fueling. If there are multiple FSEs capable of measuring the electricity dispensed at the facility or location, then it is optional to provide serial number assigned to each piece of equipment by the OEM and the name of OEM.

(v) For hydrogen, FSE refers to a fueling station. A hydrogen station with multiple dispensers is considered a single FSE.

(vi) For transportation applications not covered in Sections 8.01 (b)(8)(B)(i) through (v), FSE refers to a fuel dispenser or transportation equipment with the capability to measure the dispensed fuel in that equipment.

SECTION 8.02 Fuel Transactions and Compliance Reporting

Regulated entities must submit to the Agency quarterly fuel transactions reports and annual compliance reports, as specified in this section.

(a) Online Reporting. The annual compliance and quarterly fuel transactions reports must be submitted using CFS Online. Prior to use, a regulated entity must first register in CFS Online.

The regulated entity is solely responsible for ensuring that the Agency receives its quarterly fuel transactions reports and annual compliance reports by the deadlines specified in Section 8.02(b). A report is considered submitted when received by the Agency. The Agency is not responsible

for the failure of electronically submitted reports to be transmitted to the Agency.

(b) Reporting Frequency and Deadlines.

(1) Quarterly Fuel Transactions Data: The data for the quarterly fuel transactions report for each fuel type must be uploaded in CFS Online within the first 45 calendar days after the end of the quarter. During the subsequent 45 calendar days, regulated entities will use the reconciliation tools provided in CFS Online and in conjunction with business partners to complete any necessary report corrections.

(2) Quarterly Fuel Transactions Reports. Unless expressly provided elsewhere in this subarticle, quarterly fuel transactions reports must be submitted in CFS Online by:

June 30th - for the first calendar quarter covering January through March;

September 30th - for the second calendar quarter covering April through June;

December 31st - for the third calendar quarter covering July through September; and

March 31st - for the fourth calendar quarter of the prior year covering October through December.

(3) Annual Compliance Reports. An annual compliance report for the prior calendar year must be submitted in CFS Online by April 30th of each year.

(c) General Reporting Requirements for Quarterly Fuel Transactions Reports. For each of its transportation fuels, a regulated entity must submit a quarterly fuel transactions report that contains all of the information specified in 8.02 (c)(1) and (2) and summarized in Table 9.

(1) All applicable transaction types for each fuel type listed in Section 8.02(d) and defined in Section 2.01.

(2) Organization FEIN, Reporting Period (year and quarter), FPC, Fuel Amount, Transaction Type, Transaction Date, Business Partner (if applicable), Aggregated Transaction Indicator, Fuel Application, Production Entity ID and Facility ID (if applicable).

(d) Specific Reporting Requirements for Quarterly Fuel Transactions Reports. In addition to the requirements specified in Section 8.02(c), for each of its transportation fuels, a regulated entity must include in its quarterly fuel transactions report the information specified in sections 8.02 (d)(1) through (5) and summarized in Table 9.

(1) Specific Quarterly Reporting Parameters for Liquid Fuels including Gasoline, Diesel, Diesel Fuel Blends, Alternative Fuels, and Alternative Jet Fuel.

(A) The applicable transaction types, defined in Section 2.01, are as follows: Production for Import, Import, Purchased with Obligation, Purchased without Obligation, Sold with Obligation, Sold without Obligation, Export, Loss of Inventory, Gain of Inventory, and Not Used for Transportation. The transaction type "Production for Import" is to be reported by out-of-jurisdiction producers that choose to be the first fuel reporting entity for fuel imported into the Agency's jurisdiction. The transaction type "Import" is to be reported by non-producers that choose to be the first fuel reporting entity for out-of-jurisdiction fuel imported into Agency's jurisdiction. The following information is to be reported:

(i) Production Entity ID and Facility ID for each blendstock. Gasoline and diesel fuel are exempt from this requirement.

(ii) The certified fuel pathway code (FPC) of each blendstock.

(iii) The volume (in gallons) of each blendstock per reporting period. For purposes of this provision only, except as provided in Section 8.02 (d)(1)(A)(iv), the fuel reporting entity may report the total volume of each blendstock aggregated for each distinct carbon intensity value (e.g., X gallons of blendstock with A gCO_2e/MJ, Y gallons of blendstock with B gCO_2e/MJ).

(iv) A producer of gasoline or diesel fuel must report, for each of its refineries, the MCON or other crude oil name designation, volume (in gal), and Country (or State) of origin for each crude supplied to the refinery during the quarter.

(B) Temperature Correction. All liquid fuel volumes reported in CFS Online will be adjusted to standard temperature conditions of 60°F as follows:

(i) For ethanol, the following formula will be used:

$$V_{s,e} = V_{a,e} \times (-0.0006301 \times T + 1.0378)$$

where:

$V_{s,e}$ is the standardized volume of ethanol at 60°F, in gallons;

$V_{a,e}$ is the actual volume of ethanol, in gallons; and

T is the actual temperature of the batch, in °F.

(ii) For biodiesel, one of the following two methodologies will be used:

(I)

$$V_{s,b} = V_{a,b} \times (-0.00045767 \times T + 1.02746025)$$

where:

$V_{s,b}$ is the standardized volume of biodiesel at 60°F, in gallons;

$V_{a,b}$ is the actual volume of biodiesel, in gallons; and

T is the actual temperature of the batch, in °F.

(II) The standardized volume of biodiesel at 60°F, in gallons, as calculated from the use of the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM D1250-08 (Reapproved 2013), which is incorporated herein by reference, or by comparable means that can be demonstrated to the Agency to be consistent with these standard methods.

(iii) For other liquid fuels, the volume correction to standard conditions will be calculated by the methods described in the American Petroleum Institute (API) Manual of Petroleum Measurement Standards Chapter 11 - Physical Properties Data (May 2004), the ASTM Standard Guide for Use of the Petroleum Measurement Tables, ASTM D1250-08 (Reapproved 2013), or the API Technical Data Book - Petroleum Refining Chapter 6 - Density (Sixth Edition, April 1997), all three of which are incorporated herein by reference, or by comparable means that can be demonstrated to the Agency to be consistent with these standard methods.

(C) Fuel Pathway Allocation for Produced Fuel. If a fuel production facility simultaneously processes multiple feedstocks, the producer or regulated entity must associate each portion of the total fuel produced with processed feedstock during each reporting period (calendar quarter). Feedstock quantities must not be counted more than once for any fuel produced. The regulated entity must use one of the following methods to allocate feedstock to the quantities of produced fuel reported under each certified FPC.

(i) The quantity of fuel reported for a fuel pathway code will be determined using the following method:

$$Q^n_{Fuel\ i} = Y_{average\ yield} \times Q^n_{Feedstock\ i}$$

where:

$Q^n_{Fuel\ i}$ is the quantity of produced fuel with a fuel pathway i at a production facility during reporting period n;

$Y_{average\ yield}$ is the facility's average production yield for all feedstocks as determined during pathway certification; and

$Q^n_{Feedstock\ i}$ is the quantity of feedstock counted as processed for a fuel pathway i at a production facility during reporting period n. The quantity of feedstock inventory associated with the fuel pathway i will be greater than or equal to zero at the end of each reporting period.

If the actual quantity of fuel produced during a reporting period is greater than the quantity calculated in Section 8.02 (d)(1)(C)(i), and all feedstocks in inventory and received by the production facility during the reporting period were included in the fuel pathway application, the excess fuel must be reported under a fuel pathway with the highest CI among all pathways certified for the fuel production facility.

(ii) Section 8.02 (d)(1)(C)(i) notwithstanding, a different allocation methodology may be used with the Agency's approval. The methodology must be submitted to the Agency at the time of fuel pathway application.

(iii) Facilities with multiple certified fuel pathways that do not use feedstock inventory accounting must include chemical analysis data supporting the calculated yield (i.e. the converted fraction of measured feedstock) in annual Fuel Pathway Reports. The producer or regulated entity must use the yield calculated from the most recent prior analysis to determine the quantities of fuel to allocate to each FPC.

(D) Exports. If fuel reported in CFS Online is subsequently exported out of the Agency's jurisdiction, the export must be reported in CFS Online by the entity responsible for reporting export.

(i) Reporting Fuel Blends. When reporting export of fuel blends, the amount of each blendstock must be reported in CFS Online. If the accurate blend percentage of each blendstock is not known then default blend percentage values provided in CFS Online will be used for reporting the exports. Default blend percentage values are based on the latest complete data year.

(ii) Substitute Pathways. When an FPC is not available for reporting a fuel in CFS Online, a regulated entity must use the Substitute pathway corresponding to its fuel type.

(2) Specific Quarterly Reporting Parameters for Natural Gas (including CNG, LNG, and L-CNG). For each fueling facility to which CNG, LNG, and L-CNG, is supplied as a transportation fuel:

(A) The quantity of fuel dispensed must be reported per FSE with a certified FPC and with transaction type "NGV Fueling." For CNG and L-CNG, the quantity of fuel dispensed (in Therms at Higher Heating Value (HHV)) per reporting period separately for all light/medium-duty vehicles (LDV & MDV), for heavy-duty vehicles with compression ignition engines (HDV-CIE), and for heavy-duty vehicles with spark ignition engines (HDV-SIE). For LNG, the volume of fuel dispensed (in gallons) per reporting period separately for all LDV/MDV, for HDV-CIE, and for HDV-SIE.

(B) For Bio-CNG, Bio-LNG, and Bio-L-CNG: Biomethane production Entity ID and Facility ID.

(C) The total quantity of fuel, summed across all FPCs, dispensed for transportation purpose through the FSE during the reporting period.

(D) When the vehicle application is unknown, for the purpose of reporting, a fueling event of less than 3,500 MJ (30 gasoline gallon equivalents) of fuel dispensed must be reported as NGV Fueling of LDV/MDV. A fueling event of 3,500 MJ or more must be reported as NGV Fueling of HDV.

(3) Specific Quarterly Reporting Parameters for Electricity used as a Transportation Fuel.

(A) For Residential EV charging.

(i) The Agency will use the method set forth in Section 7.04 (b)(1) to calculate any credits generated for the quarter and place them into the Electric Utility's CFS Online account.

(B) For Non-Residential EV Charging.

(i) For generating credits the quantity of electricity (in kWh) used for EV charging must be reported per FSE using the Electric Utility specific fuel pathway code and with transaction type "EV Charging - Utility Name."

(ii) For Fixed Guideway Systems. The quantity of electricity used for transit propulsion (in kWh) must be reported per FSE with a certified FPC and with transaction type "Fixed Guideway Electricity Fueling." FSE ID is assigned by system during the registration process.

(iii) For Electric Forklifts. The quantity of electricity used (in kWh) must be reported per FSE with a certified FPC and with transaction type "EV Forklifts Fueling." The quantity of electricity used during a reporting period must be measured per FSE and with transaction type "Forklift Electricity Fueling", in the case of an electric forklift fleet owner or its designee generating credits.

(iv) For Electric Transport Refrigeration Unit. The quantity of electricity (in kWh) dispensed must be reported per FSE with a certified FPC and with transaction type "eTRU Fueling."

(v) Electric Cargo Handling Equipment. The quantity of electricity (in kWh) dispensed must be reported per FSE with a certified FPC and with transaction type "eCHE Fueling."

(vi) Electric Power for Ocean-going Vessel. The quantity of electricity (in kWh) dispensed must be reported per FSE with a certified FPC and with transaction type "eOGV Fueling."

(vii) Electric Power for Harbor Vessels. The quantity of electricity (in kWh) dispensed must be reported per FSE with a certified FPC and with transaction type "eHV Fueling."

(viii) Other Electric Transportation Applications. The quantity of electricity (in kWh) dispensed must be reported per FSE with a certified FPC and with transaction type made available by the Agency.

(4) Specific Quarterly Reporting Parameters for Hydrogen Used as a Transportation Fuel.

(A) The quantity (in kilograms) of hydrogen fuel dispensed per FSE with a certified FPC and with transaction type "FCV Fueling" by vehicle weight category: LDV & MDV and HDV.

(B) For hydrogen fuel cell forklifts, the amount of hydrogen fuel dispensed (in kg) per FSE with a certified FPC and with transaction type "Forklift Hydrogen Fueling."

(C) Production Entity ID and Facility ID.

(5) Specific Quarterly Reporting Parameters for Propane.

(A) The quantity (in gallons) of propane dispensed per FSE, with a certified FPC and with transaction type "Propane Fueling."

(B) For renewable propane, the Production Entity ID and Facility ID.

(e) Reporting Requirements for Annual Compliance Reports. Regulated entities and project operators must submit an annual compliance report that aggregates the quarterly fuel transactions reports and provides the additional information as follows:

(1) An annual summary, generated by CFS Online for each fuel reporting entity and project operator, that includes the following:

(A) The total credits and deficits generated by the regulated entity and project operator in the compliance period, calculated in CFS Online per Sections 7.04 and 7.05;

(B) Any credits carried over from the previous compliance period;

(C) Any deficits carried over from the previous compliance period;

(D) The total credits acquired from other entities;

(E) The total credits sold or otherwise transferred;

(F) The total credits retired within the CFS to meet compliance obligation per Section 7.06; and

(G) Total credits acquired from or pledged for sale into the CCM, if applicable;

(H) Total credits purchased as carryback credits; and

(I) Any credits on administrative hold.

(2) A producer of gasoline or diesel fuel must report, for each of its refineries, the MCON or other crude oil name designation, amount (in gal), and Country (or State) of origin for each crude supplied to the refinery during the annual compliance period.

(3) At the time of submittal of the annual compliance report:

(A) If there is still a pending outgoing credit transfer, the credits will be taken from the account of the Seller that initiated the transfer and the annual compliance report will reflect the adjusted credit balance.

(B) If there is a pending incoming credit transfer, the Buyer's annual report will not reflect the balance until the transfer is completed. Upon completion, the annual compliance report will be reopened and resubmitted with the adjusted credit balance.

(4) Attestations Regarding Environmental Attributes for Biomethane. Entities reporting bio-CNG, bio-LNG, and bio-L-CNG must submit the environmental attribute attestation pursuant to Section 6.01 (b)(2)(A), along with the annual compliance report in CFS Online.

(5) Electric Utilities must include in the annual compliance report an itemized summary of how the requirements detailed in Section 5.02 (e)(1) are met and the costs associated with meeting the requirements.

(f) Significant Figures. A regulated entity must report the following quantities as specified below:

(1) Carbon intensity, expressed to the same number of significant figures as shown in Tables 1 and 2;

(2) Credits or deficits, expressed to the nearest whole metric ton CO_2 equivalent (MT CO_2e);

(3) Fuel amounts in units specified in Section 8.02(d), expressed to the nearest whole unit applicable for that quantity; and

(4) Any other quantity must be expressed to the nearest whole unit applicable for that quantity.

(g) A regulated entity must maintain a non-negative value for Total Obligated Amount and Total Amount, as defined in Section 2.01, for each FPC as summed across all quarterly data in CFS Online.

(h) Correcting a Previously Submitted Report. Upon discovery of an error, a regulated entity may request to have previously submitted quarterly reports for the current compliance period reopened for corrective edits and resubmittal by submitting a Correction Request Form online in CFS Online. The regulated entity is required to provide justification for the report corrections and indicate the specific corrections to be made to the report. Pursuant to Section 7.01(h) no credits may be claimed, and no deficits may be eliminated. Each submitted request is subject to Agency review and approval.

Table 9. Annual Compliance Calendar for Regulated and Opt-in Entities

Due Date	Activity/Deliverable
February 15	·Upload all Q4 fuel transactions data in CFS Online and begin any needed reconciliation with business partners
March 31	·Submit final Q4 fuel transactions report ·Submit Q4 Crude Oil Reports (MCON Reports) ·Submit Annual Fuel Pathway Reports
April 30	·Submit final Annual Compliance Report for preceding year ·Voluntary pledge of credits for sale into Credit Clearance Market (CCM) ·Submit Annual Crude Oil Reports (MCON Reports)
May 15	·Upload all Q1 fuel transactions data in CFS Online and begin any needed reconciliation with business partners ·Agency will announce whether CCM will occur
June 1	·If CCM occurs, Agency will post list of buyers and sellers ·CCM will be in effect for June and July

Due Date	Activity/Deliverable
June 30	·Submit final Q1 fuel transactions report ·Submit Q1 Crude Oil Reports (MCON Reports)
July 31	·CCM for prior year closes
August 14	·Upload all Q2 fuel transactions data in CFS Online and begin any needed reconciliation with business partners
August 31	·Entities that bought and sold credits in the CCM submit amended Annual Compliance Report
September 30	·Submit final Q2 fuel transactions report ·Submit Q2 Crude Oil Reports (MCON Reports)
November 14	·Upload all Q3 fuel transactions data in CFS Online and begin any needed reconciliation with business partners
December 31	·Submit final Q3 fuel transactions report ·Submit Q3 Crude Oil Reports (MCON Reports)

SECTION 8.03 Change of Ownership or Operational Control

If an entity or a facility registered in the RT-CBTS and/or the AFP undergoes a change of ownership or operational control, the following requirements reply. For any report submitted for the CFS, a report is considered submitted when received by the Agency. The Agency is not responsible for the failure of electronically submitted reports to be transmitted to the Agency.

(a) Agency Notifications. No later than 30 calendar days after the change of ownership or operational control:

(1) The previous owner or operator of the regulated entity or facility must provide in writing to the Agency:

(A) The name of the new owner or operator and the date of the ownership or operational control change.

(2) The new owner or operator must provide in writing to the Agency the following information:

(A) Previous owner or operator;

(B) New owner or operator;

(C) Date of ownership or operator change;

(D) Name of new account representatives for the affected entity's account in CFS Online.

(3) The previous owner will give the Agency direction regarding the disposition of net credits in the previous owner's RT-CBTS account and the certified fuel pathways associated with the previous owner's AFP account.

(b) Reporting Responsibilities. The owner or operator of record at the time of a reporting deadline specified in Table 9 has the responsibility for complying with the requirements of Section 8.02, including submitting quarterly and annual reports, and certifying that the reports are accurate and complete.

(1) Reported data must not be split or subdivided for a reporting period, based on ownership. A single reporting period data report must be submitted for the entity by the current owner or operator. This report must represent required data for the entire reporting period.

(2) Previous owners or operators are required to provide to new owners or operators data and records that are necessary and required for preparing quarterly and annual reports required by Section 8.02.

(c) New Owner Responsible for Net Deficits. The new owner, when filing the annual report, is responsible for demonstrating compliance pursuant to 7.06.

(d) Bankruptcy. As determined by federal law, deficits constitute regulatory obligations under the CFS.

(e) Fate of Credits and Deficits After an Entity Dissolves.

(1) The Agency will place into the Buffer Account any net credits in the account of an entity that dissolves or otherwise ceases to exist without notifying the Agency pursuant to this section.

(2) Prior to dissolution, a fuel reporting entity is responsible for retiring credits equal to any net deficits in its RT-CBTS account and fulfill account closure requirements as set forth in Section 8.01 (b)(7).

Reviser's note: The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 8.04 Recordkeeping and Auditing

(a) Record Retention. Any record required to be maintained by fuel reporting entities, fuel pathway holders, and applicants under this section must be retained for ten years. All data and calculations submitted by a regulated entity for demonstrating compliance, or generating credits or deficits are subject to inspection by the Agency and will be made available within 20 calendar days upon request of the Agency.

(1) Record Retention for Fuel Reporting Entities. Fuel reporting entities must maintain all records and calculations relied upon for data reported in the CFS Online. These records include, but are not limited to:

(A) Product transfer documents;

(B) Copies of all data reports submitted to the Agency;

(C) Records related to each fuel transaction;

(D) Records used for each credit transaction;

(E) Records related to FSE registration;

(F) Chain of custody evidence for produced fuel imported into the Agency's jurisdiction; and

(G) Records used for compliance or credit and deficit calculations.

(2) Record Retention for Fuel Pathway Holders and Applicants. Fuel pathway holders and applicants must maintain all records relied upon in producing fuel pathway applications and annual Fuel Pathway Reports. The retained documents, including CI input source data and supplemental documentation, must be sufficient to allow for verification of each CI calculation. These records include but are not limited to:

(A) The quantity of fuel produced and subsequently sold in the Agency's jurisdiction under the certified fuel pathway. Sales invoices, agreements, and bills of lading for those fuel sales must be retained.

(B) The quantity of feedstocks purchased to produce the fuel specified in Section 8.04 (a)(2)(A). Invoices from the sellers and purchase agreements must be retained. Records to support material balance and energy balance calculations for facilities processing multiple feedstocks.

(C) The quantity of all forms of energy consumed to produce the fuel covered in Section 8.04 (a)(2)(A). All invoices

for the purchase of process fuel, and all receipts for the sale of the fuel pathway applicant's finished fuel must be maintained.

(D) The quantity of all products co-produced with the fuel covered by certified CFS pathway. Copies of invoices, agreements, and bills of lading covering those sales must be retained. In addition, copies of the federal RFS Fuel Producer Co-products Report must be retained, if applicable. If the amount of co-product produced exceeds the amount sold by five percent or more, full documentation of the fate of the unsold fractions must be maintained.

(E) Evidence demonstrating chain of custody from the point of origin along the supply chain to the fuel production facility is required for any feedstock defined as a specified source feedstock pursuant to Section 6.01 (c)(2).

(F) Any additional records that the Agency requests during pathway certification and records that demonstrate compliance with all special limitations and operating conditions issued at the time of certification.

(b) Documenting Fuel Transfers Reported in the CFS Online. A product transfer document provided by a fuel reporting entity pursuant to Section 5.01 (a)(2)(A) must prominently state the information specified:

(1) For transfers where a CFS obligation to act as a credit or deficit generator is being passed to the recipient:

(A) Transferor Entity Name, Address and Contact Information;

(B) Recipient Entity Name, Address and Contact Information;

(C) Transaction Date: Date of Title Transfer for Fuel;

(D) Fuel Pathway Code (FPC) and Carbon Intensity (CI);

(E) Fuel Quantity and Units;

(F) A statement identifying whether the CFS obligation to act as a credit or deficit generator is passed to the recipient; and

(G) Fuel Production Entity ID and Facility ID as registered with RFS program or CFS program. This does not apply to Gasoline, Diesel Fuel or Fossil Natural Gas.

(2) For transfers where the CFS obligation to act as a credit or deficit generator was retained by the transferor, the following is to be provided to the recipient and passed along to any subsequent owner or supplier:

(A) All information identified in Sections 8.04 (b)(1)(A) through (G);

(B) The following notice reading as follows:

"This transportation fuel has been reported to the CFS Program by **<Insert name of Fuel Reporting Entity holding CFS obligation to act as a credit or deficit generator>** for intended use in the Agency's jurisdiction. If **<Insert name of recipient>** exports this fuel from the Agency's jurisdiction **<Insert name of recipient>** will report to the Agency."

Article 9: Enforcement and Other Provisions

SECTION 9.01 Administrative Orders

(a) **Purpose.** The Control Officer, or a duly authorized representative, may issue such administrative orders to establish approvals and to deny requested approvals for entities subject to this regulation. The control officer, or a duly authorized representative, may also issue administrative orders to implement provisions of Section 9.03. These orders are issued as provided by the applicable provisions of chapter 70.94 RCW and the regulations adopted thereunder.

(b) **Process.** When the Control Officer, or a duly authorized representative, issues an administrative order under this regulation, the order will include the following:

(1) Identification of the entity receiving the administrative order;

(2) Identification of the determination (including approval or denial) made through the administrative order, including a reference to the specific provision in this regulation that the order is implementing; and

(3) If applicable, identification of any conditions necessary to support the approval and compliance with this regulation.

(4) If applicable, identification of any corrective action necessary to support compliance with this regulation.

(5) Any administrative order denying a requested approval that is included in this regulation shall also include the reason for the denial, along with the supporting facts or documentation for that conclusion attached or included.

(6) Any administrative order issued for decisions identified in Section 9.03 may include conditions as necessary to implement the decision. Information identified in Section 9.01 (b)(1) to (5) will be included, as necessary.

(c) **Appeals.** Administrative orders issued pursuant to this section are effective the day the Control Officer or duly authorized representative approves the order and may be appealed to the Pollution Control Hearings Board pursuant to Agency Regulation I, Section 3.17 and RCW 43.21B.310.

SECTION 9.02 Violations and Civil Penalties

(a) Violations. For any violations of provisions of this regulation, or orders issued pursuant to this regulation, the Agency will follow the procedures provided in Regulation I, Section 3.09.

(b) Civil Penalties. Any entity that violates any provisions of this regulation or orders issued pursuant to this regulation may incur a civil penalty per the Agency's Regulation I, Section 3.11.

SECTION 9.03 Authority to Suspend, Revoke, Modify, or Invalidate

(a) If the Agency determines that any basis for invalidation set forth in Section 9.03 (b)(1) occurred, in addition to taking any enforcement action, the Agency may: suspend, restrict, modify, or revoke a CFS Online account; modify or delete a Certified CI; restrict, suspend, or invalidate credits; or recalculate the deficits in a CFS Online account. For purposes of this section, "Certified CI" includes any determination relating to carbon intensity made pursuant to Section 6.01 or 6.02, or relating to a credit-generating activity approved under Sections 7.04 and 7.05.

(b) Determination that a Credit, Deficit Calculation, or Certified CI is Invalid.

(1) Basis for Invalidating. The Agency may modify or delete a Certified CI and invalidate credits or recalculate deficits based on any of the following:

(A) Any of the information used to generate or support the Certified CI was incorrect for reasons including the omis-

sion of material information or changes to the process following submission;

(B) Any material information submitted in connection with any Certified CI or credit transaction was incorrect;

(C) Fuel reported under a given pathway was produced or transported in a manner that varies in any way from the methods set forth in any corresponding pathway application documents submitted pursuant to Section 6.01 or 6.02;

(D) Fuel transaction or other data reported into CFS Online and used in calculating credits and deficits was incorrect or omitted material information;

(E) Credits or deficits were generated or transferred in violation of any provision of this subarticle or in violation of other laws, statutes or regulations; or

(F) An entity obligated to provide records under this subarticle refused to provide such records or failed to produce them within the required time.

(G) For purposes of this section, "material information" means:

(i) Information that would affect by any amount the Agency's determination of a carbon intensity score, expressed on a gCO_2e/MJ basis to two decimal places, or

(ii) Information that would affect by any whole integer the number of credits or deficits generated under Sections 7.01 through 7.05 or resulting from any transaction or other activity reported in the CFS Online.

(2) Notice. Upon making an initial determination that a credit (other than a provisional credit), deficit calculation, or Certified CI (other than a provisionally-certified CI) may be subject to modification, deletion, recalculation, or invalidation under Section 9.03 (b)(1), the Agency will provide written notice, pursuant to Section 9.01, to all potentially affected entities, including those that hold or generate credits or deficits based on a Certified CI that may be invalid, and may notify any linked program. The notice will state the reason for the initial determination. Any entity receiving such notice may submit, within 20 days, any information that it wants the Agency to consider. The Agency may request information or documentation from any entity likely to have information or records relevant to the validity of a credit, deficit calculation, or Certified CI. Within 20 days of any such request, a regulated entity will make records and personnel available to assist the Agency in determining the validity of the credit, deficit calculation, or Certified CI.

(3) Interim Account Suspension. When the Agency makes an initial determination pursuant to Suection 9.03 (b)(1), the Agency may immediately take steps to suspend an account or a Certified CI as needed to prevent additional accrual of credits or deficits under the Certified CI and to prevent transfer of potentially invalid credits or deficits. Suspension of an account may include locking an account within the CFS Online to prevent credit transfers or report alteration.

(4) Final Determination. After making an initial determination and issuing a notice under Sections 9.03 (b)(1) and (2), the Agency will make a final determination based on available information whether, in its judgment, any of the bases listed in Section 9.03 (b)(1) exists, and notify affected entities and any linked program, pursuant to Section 9.01. If the final determination invalidates credits or deficit calculations, the corresponding credits and deficits will be added to or subtracted from the appropriate CFS Online accounts. Where such action creates a deficit in a past compliance period, the deficit holder has 60 days from the date of the final determination to purchase sufficient credits to eliminate the entire deficit. A return to compliance does not preclude further enforcement actions by the Agency.

(5) Adjustment of Invalidated Credits or Miscalculated Deficits. To address any invalid credits or miscalculated deficits in the program, the Agency may:

(A) Remove the invalid credits from or add miscalculated deficits to the account of the credit or deficit generator, or other entity deemed responsible for the invalidation or miscalculation in the final determination pursuant to Section 7.04. The entity is responsible for returning its account to compliance; or

(B) Choose to retire credits from the Buffer Account to address invalidated credits or uncovered deficits.

(C) After exercising options in Sections 9.03 (b)(5)(A) and (B), the Agency may remove remaining invalid credits from an entity's account that holds or previously held invalid credits. The entity is responsible for returning its account to compliance.

Reviser's note: The spelling error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.04 Confidentiality

(a) Any emissions-related data submitted to the Agency under the CFS are public information and must not be designated as confidential.

(b) Any proprietary or confidential information exempt from disclosure when reported to the Washington State Department of Licensing that the Agency obtains directly from that Department will remain exempt from disclosure.

(c) Information considered confidential by the U.S. EPA is not considered confidential by the Agency unless it also meets the conditions established in Sections 9.04 (b) or (d).

(d) Any person submitting information to the Agency under CFS may request that the Agency keep information that is not emissions-related data confidential as proprietary information under RCW 70.94.205 or because it is otherwise exempt from public disclosure under the Washington Public Records Act (chapter 42.56 RCW). All such requests for confidentiality must meet the requirements of RCW 70.94.205 and the Agency's Regulation I, Article 14.

(e) The Agency's determinations of the verification status of any report submitted for the CFS are public information. Confidential data used in the verification process will remain confidential if the data meets requirements of Sections 9.04 (b) or (d).

SECTION 9.05 Program Review

Program review. The Agency will periodically review the CFS. The review will include, but is not limited to, an analysis and summary of: progress compared to carbon intensity reduction benchmarks, fuels and actions used to meet compliance, overall credit market, issues as identified by staff, and will consider input provided from the Equity Advisory Committee.

Article 10: Severability

Each provision of this regulation or its application to any person or circumstance will be deemed severable, and in the event that any provision in this regulation or its application to any person or circumstance is held to be invalid, the remainder of this regulation will continue in effect.

WSR 19-21-116
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed October 18, 2019, 9:00 a.m.]

Supplemental Notice to WSR 19-11-105.

Preproposal statement of inquiry was filed as WSR 19-03-013.

Title of Rule and Other Identifying Information: The department is proposing to create new WAC sections in chapter 388-76 WAC, Adult family home minimum licensing requirements, on requirements for notifying the department of information changes and creating a succession plan. The department is also proposing to amend WAC 388-76-10000 Definitions, 388-76-10003 Department access, 388-76-10020 License—Ability to provide care and services, 388-76-10035 License requirements—Multiple family home providers, 388-76-10037 License requirements—Multiple adult family homes—Additional homes, 388-76-10060 Application—Department orientation class—Required, 388-76-10063 Application—General training requirements, 388-76-10064 Adult family home administrator training requirements, 388-76-10074 Application—Waiver of fees, 388-76-10085 Application—Individual or coprovider, 388-76-10090 Application—Entity application, 388-76-10095 Application—Identification of landlord—Required, 388-76-10105 Application—Change of ownership, 388-76-10106 Change of ownership—Notice to department and residents, 388-76-10107 Priority processing—Change of ownership and relocation, 388-76-10120 License—Must be denied, 388-76-10125 License—May be denied, 388-76-10129 Qualifications—Adult family home personnel, 388-76-10130 Qualifications—Provider, entity representative and resident manager, 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager, and 388-76-10950 Remedies—History and actions by individuals.

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than December 11, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 10, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal came from concerns raised by representatives of the adult family home industry regarding barriers to entry for certain provider and entity types. The proposed rule changes are intended to address these issues and clarify other requirements for licensure that have been ambiguous. The anticipated effect is to reduce regulatory burdens for new qualified providers, increase access to the adult family home industry, and to access beds for residents.

Reasons Supporting Proposal: The expected outcome is increased access to the adult family home market, an increased number of available adult family home beds both for those who are and are not clients of home and community services, decreased application processing wait times, and improved compliance due to better clarity of the regulations. These all fit into the goals and the mission of DSHS. Together, these proposed changes will improve the quality of care for residents and ensure protection of their rights.

Statutory Authority for Adoption: RCW 70.128.040, 70.128.060.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, 253-234-6061.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@dshs.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The department looked at costs of training, applications, and time spent on administrative training, and consulted with stakeholders. After examining all the costs, the department determined that costs are either less than minor, optional for a business, or rare, and that the changes will cause more savings than increased costs.

A copy of the detailed cost calculations may be obtained by contacting Libby Wagner, 20425 72nd Avenue South, Kent, WA 98032, phone 253-234-6061, fax 253-395-5073, email wagnee@dshs.wa.gov.

October 16, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-07-068, filed 3/16/18, effective 4/16/18)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

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

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

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

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

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

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

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"Adult family home" or **"AFH"** means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a ((~~licensed operator~~)) provider, entity representative, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Affiliated entity" means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

"Applicant" means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);
(b) WAC 388-76-10035(1);
(c) WAC 388-76-10060;
(d) WAC 388-76-10064;
(e) WAC 388-76-10120;
(f) WAC 388-76-10125;
(g) WAC 388-76-10129;
(h) WAC 388-76-10130;
(i) WAC 388-76-10146(4);
(j) WAC 388-76-10265;
(k) WAC 388-76-10500; and
(l) WAC 388-76-10505.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. Capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; and

(2) The number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

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

"Dementia" means a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means the same as defined under WAC 388-823-0015.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Entity representative" means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

((~~**"Entity representative"** means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112A WAC.~~))

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

(1) Has demonstrated competency in the basic and specialty training, if required; or

(2) Is exempt from basic training requirements.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple ((~~facility~~)) home provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

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

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care

workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any ((~~person~~)) individual who is licensed to operate an adult family home and meets the requirements of this chapter; ((~~or~~))

(2) Any corporation, partnership, ((~~or~~)) limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) WAC 388-76-10060;

(d) WAC 388-76-10064;

(e) WAC 388-76-10120;

(f) WAC 388-76-10125;

(g) WAC 388-76-10129;

(h) WAC 388-76-10130;

(i) WAC 388-76-10146(4);

(j) WAC 388-76-10265;

(k) WAC 388-76-10500; and

(l) WAC 388-76-10505.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

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

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter 388-112A WAC.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

((~~**"Water hazard"** means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:~~

~~(1) In-ground, above-ground, and on-ground pools;~~

~~(2) Hot tubs, spas;~~

~~(3) Fixed-in-place wading pools;~~

~~(4) Decorative water features;~~

~~(5) Ponds; or~~

~~(6) Natural bodies of water such as streams, lakes, rivers, and oceans.~~))

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW;

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

(4) Admitted to any facility;

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

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in their own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.-050.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10003 Department access. (1) During the initial licensing of the home, the applicant must allow the department staff to inspect the entire premises including all of the home's rooms, buildings, grounds, and equipment and all pertinent records ((~~during the initial licensing of the home~~)).

(2) During inspections after initial licensing is complete, the adult family home must allow the department staff to examine all areas and articles in the home that are used to provide care or support to residents, including the physical premises and residents' records and accounts. The physical premises includes the buildings, grounds, and equipment, as well as all areas of the home for the purpose of checking smoke detectors, fire extinguishers, and posting of the emergency evacuation floor plan. The ((~~provider's~~)) personal records of adult family home staff unrelated to the operation of the adult family home are not subject to department ((~~review~~)) inspection. ((~~The provider's~~)) A separate bedroom used by adult family home staff will not be subject to review and inspection unless it is used to provide direct care to a resident.

(3) During complaint investigations, the adult family home must give department staff access to the entire premises and all records related to the residents or operation of the home. Department staff are authorized to interview the provider, family members, and individuals residing in the home including residents.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10020 License—Ability to provide care and services. The provider must have the:

(1) Understanding, ability, emotional stability and physical health necessary to meet the psychosocial, personal, and special care needs of the vulnerable adults under the home's care; and

(2) Ability to meet all personal and business financial obligations.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10035 License requirements—Multiple adult family home providers. The department will only consider an application for more than one home if the applicant has:

(1) Evidence of successful completion of the ((~~forty-eight hour residential care administrator's~~)) adult family home administrator training to meet the applicable requirements of chapter 388-112A WAC;

(2) The ability to operate more than one home;

(3) The following plans for each home the applicant intends to operate. Each of the following plans must be updated and maintained:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking((.));

(4) A demonstrated history of financial solvency related to the ability to provide care and services; and

(5) ((An entity representative or)) A different resident manager at each home who is responsible for the care of each resident at all times.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10037 License requirements—Multiple adult family homes—Additional homes. The department will only accept and process an application for an additional license as follows:

(1) For a second home, if the applicant has maintained the first adult family home license for at least twenty-four months with no enforcement actions as listed in RCW 70.128.160(2) related to a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter, or other applicable laws and regulations; and

(2) For a third or additional homes as follows:

(a) When twelve months have passed since the previous adult family home license was granted and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application; or

(b) When less than twelve months have passed since the previous adult family home license was granted; and

(i) The applications are due to the change in ownership of existing adult family homes that are currently licensed; and

(ii) No enforcement action was taken against any of the applicant's currently licensed homes during the twelve months prior to application.

NEW SECTION

WAC 388-76-10041 License—Change of personnel. An entity provider must:

(1) Notify the department when officers, directors, or entity representatives change, or when any owner is added and what percent of ownership is granted;

(2) Provide at least one point of contact for the owner, board of directors, or other governing body and if the entity has a board of directors, the provider must post in the home in a visible location in a common area information on at least one board meeting per twelve month period where all residents, their representatives, adult family home staff, the department, representatives of resident advocacy programs, and the long-term care ombuds can view it; and

(3) Provide written notice to all residents and the department when the entity representative changes as soon as possible upon realizing the need for a change.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10060 Application—Department orientation class—Required. (1) An applicant or any person who has not held an adult family home license within the last twelve months must attend a department approved orientation class before ((receiving)) submitting an application ((form; and)).

(2) If an applicant has not obtained an adult family home license within one calendar year of submitting the application to the department the applicant must attend department orientation again.

(3) A new entity representative in a currently-licensed adult family home must attend a department-approved orientation class within one hundred and twenty days of assuming the role, unless:

(a) They have completed the course in the previous twenty-four months; or

(b) They worked as an entity representative or provider in an adult family home in the last twelve months.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10063 Application—General training requirements. An applicant must ensure that ((each person)) any individual provider, entity representative, or resident manager listed on the application has successfully completed the training ((if)) that is required for their role under this chapter and chapter 388-112A WAC.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10064 Adult family home administrator training requirements. (1) ((The applicant and the entity representative)) Applicants and entity representatives must successfully complete the department approved adult family home administration class as required in chapter 388-112A WAC.

(2) An applicant ((and)) who operates or is the entity representative ((may not be required to take)) in a currently licensed home and has already taken the adult family home administrator ((class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home)) training is not required to take the class again. However, a currently licensed provider or current entity representative who has not successfully completed the adult family home administrator training must take the class before submitting an application for a new license.

(3) ((An applicant and entity representative must take the adult family home administrator class when the application is for an additional licensed home and the class has not already been successfully taken.

(4) The class must be a minimum of forty-eight hours of classroom time and approved by the department.

(5))) Under exceptional circumstances, the department may waive the administrator training class for up to four months if the application meets all the other requirements for

licensure and all the components of WAC 388-76-10074 or the requirements for a provisional license per RCW 70.128.-064.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10074 Application—Waiver of fees. The department may authorize a one-time waiver of the application fees for a change of ownership or relocation, if the situation meets all of the following conditions((:)):

(1) The current provider has experienced an exceptional circumstance such as((:

~~(a) The death or incapacity of a spouse who was also named on the license; or~~

~~(b)~~)) the diagnosis of a terminal or debilitating illness that prevents them from running the adult family home; ((~~and~~))

(2) Residents will be forced to move if a new provider is not licensed; ((~~and~~))

(3) Full payment of the licensing fee would cause the applicant a financial hardship; ((~~and~~))

(4) The application has been approved for priority processing by the local field office per WAC 388-76-10107; and

(5) Neither the applicant nor the current provider has requested a waiver of fees in the past.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10085 Application—((~~Individual or coprovider~~)) Affiliated facilities. The applicant must include in the application a list of all facilities or homes in which the applicant ((~~or~~)), persons affiliated with the applicant, or affiliated entities provided care and services to children or vulnerable adults within the last ten years.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10090 Application—Entity application. An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Fulfills the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot;

(b) Is responsible on behalf of the entity for the ((~~daily~~)) operations of the adult family home;

(((~~b~~))) (c) Will be considered the department's primary contact person on behalf of the entity; ((~~and~~

~~(c)~~)) (d) May act as ((~~both the entity representative and~~)) the resident manager in only one home((~~.~~)):

(e) May be an officer, director, member, or owner of the entity, but in the case that they are not, the entity provider must have a plan under WAC 388-76-10201 to ensure that at no time will the entity provider lack an entity representative that meets the requirements of subsection (2)(a) of this section; and

(f) May be designated as the entity representative for only one entity provider;

(3) Designate a resident manager for the home if the entity representative is not the designated resident manager in subsection (((~~(2)(c)~~))) (2)(d) of this section; and

(4) Identify all DSHS-licensed facilities or homes owned by any affiliated entity.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10095 Application—Identification of ((~~landlord~~)) property owner—Required. (1) Applicants must name the ((~~landlord~~)) property owner of the building if the building to be used as an adult family home is leased, under contract, or rented and the ((~~landlord~~)) property owner takes an active interest in the operation of the home.

(2) An active interest includes but is not limited to:

(a) The charging of rent as a percentage of the business;

(b) Assistance with start-up and/or operational costs;

(c) Collection of resident fees;

(d) Recruitment of residents;

(e) Management oversight;

(f) Assessment and/or negotiated care plan development of residents; ((~~or~~))

(g) The provision of personal or special care of residents; or

(h) Property ownership by an affiliated entity.

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10105 Application—Change of ownership. (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract, or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

(a) The provider; or

(b) The control of a provider.

(4) Events ((~~which~~)) that constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

(i) A partnership;

(ii) A corporation;

(iii) A limited liability company; or

(iv) When it merges with another legal organization((~~.~~)):

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both((~~.~~)):

(c) ((~~Two people are both licensed as a married couple or domestic partners to operate an adult family home and an~~

~~event, such as a separation, divorce, or death, results in only one person operating the home.~~

~~(d)~~)) Dissolution of a business partnership that is licensed to operate the adult family home((~~,~~));

(((~~(c)~~))) (d) If the adult family home is ((~~a corporation and the corporation~~)) an entity and the entity:

(i) Is dissolved;

(ii) Merges with another ((~~corporation~~)) entity, resulting in a change in the control of the provider; ((~~or~~))

(iii) Consolidates with one or more ((~~corporations~~)) entities to form a new ((~~corporation~~)) entity; or

(iv) Whether by a single transaction or multiple transactions ((~~within a continuous twenty-four month~~)) over any time period, transfers fifty percent or more of its shares to one or more of the following:

(A) New or former ((~~shareholders~~)) owners; or

(B) Present ((~~shareholders~~)) owners, each having less than five percent of the ((~~shares~~)) ownership interest before the initial transaction((~~,~~)); or

(((~~(f)~~))) (e) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

(5) Events which do not by themselves constitute a change in ownership include:

(a) For a nonprofit entity only, a change of a member or members of the board of directors;

(b) A change in entity representative; or

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as separation, divorce, or death, results in only one person operating the home.

(6) The new owner:

(a) Must obtain a new license from the department before transfer of ownership;

(b) Must not begin operation of the adult family home until the department has granted the license unless a provisional license has been requested and granted for exceptional circumstances per RCW 70.128.064;

(c) Must correct all deficiencies that exist at the time of the ownership change;

(d) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations; ((~~and~~))

(e) Must ensure that any funds in the resident's accounts at the time of the ownership change remain in an equivalent account. If any funds in resident's accounts are moved, the new owner must promptly notify residents or resident's representative in writing of the name, address, and location of the new depository; and

(f) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10106 Change of ownership—Notice to department and residents. (1) The current adult family home owner must provide written notice to the department((~~,~~)) and residents or applicable resident representatives((~~,~~)) sixty calendar days prior to the date of the proposed change of ownership; and

(2) The home must include the following information in the written notice:

(a) Names of the present owner and prospective owner, and if the present or prospective owner is an entity, include the names of each partner, member, officer, and director of the entity, and of any affiliated entities;

(b) Name and address of the adult family home for which the ownership is being changed;

(c) ((~~Date of proposed change;~~

~~(d)~~)) Date notice was provided;

(d) The resident's right to decide whether they want to stay or move; and

(e) Any change in the home's policies or operations that could impact a resident's ability to continue to live in the home. For example, if the new owner will be changing the home's policy on serving medicaid eligible residents, that change might impact a resident's ability to continue receiving services in the home.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10107 Priority processing—Change of ownership and relocation. (1) In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider of an existing, licensed adult family home in the event of a change of ownership or relocation.

(2) If priority processing is granted, the requirement that written notification be provided to the department and residents or applicable resident representatives sixty days prior to the change of ownership may be waived. Notice will be required as early as possible if this requirement is waived.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10120 License—Must be denied. The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved ((~~forty-eight hour~~)) adult family home administration and business planning class except as provided in WAC 388-76-10064((~~,~~));

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice of the department's initiation of a denial, suspension, nonrenewal or revocation of the license((~~,~~)); or

(3) The applicant ((~~or~~)), the ((~~applicant's~~)) spouse((~~,~~)) or domestic partner of an applicant who is a sole proprietor, the spouse or domestic partner of an entity representative with an ownership interest in the business, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has a conviction or pending criminal charge for a crime that is automatically disqualifying under chapter 388-113 WAC; or

(d) Has one or more of the following disqualifying negative actions:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The person is a registered sex offender;

(iii) The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10125 License—May be denied. The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home;

(2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120((.));

(3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed((.)) in connection with the operation of any facility for the care of children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license from the department by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations((.));

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(20) Has failed to meet personal financial obligations, or if the applicant is an entity, has failed to meet the entity's financial obligation, or both;

(21) Interfered with a long-term care ombuds or department staff in the performance of his or her duties;

(22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; ((~~or~~))

(23) The home is currently licensed:

(a) As an assisted living facility; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of ((~~persons~~)) residents receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home((~~.~~));

(24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090((~~.~~));

(25) Has an ownership interest in one or more currently licensed adult family homes or additional applications and does not meet the requirements of being a multiple home provider; or

(26) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10129 Qualifications—Adult family home personnel. (1) The adult family home must ensure that ((~~the following are qualified and meet all of the applicable requirements of this chapter and chapter 388-112A WAC:~~

~~(1)~~)) any person employed or used by the adult family home, directly or by contract, ((~~by an adult family home; including~~)) is qualified and meets all of the applicable requirements of this chapter and chapter 388-112A WAC. This may include, but is not limited to:

(a) The provider;

(b) Entity representative;

(c) Resident manager;

(d) Staff; and

(e) Caregivers.

(2) Every home must have a designated resident manager. The provider or entity representative can also be the designated resident manager, but an individual can only be the designated resident manager for one home at a time.

(3) For entities licensed after the effective date of this section, an individual can only be the entity representative for one entity provider.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10130 Qualifications—Provider, entity representative, and resident manager. The adult family home must ensure that the provider, entity representative on behalf of an entity provider, and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536, or any English or translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required((~~.~~));

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112A WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans((~~.~~));

(6) ((~~Assure that there is a mechanism~~)) Have the ability to communicate with ((~~the resident~~)) residents in ((~~his or her~~)) their primary language ((~~either~~)), including through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line((~~.~~));

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

(a) Physician licensed under chapter 18.71 RCW;

(b) Osteopathic physician licensed under chapter 18.57 RCW;

(c) Osteopathic physician assistant licensed under chapter 18.57A RCW;

(d) Physician assistant licensed under chapter 18.71A RCW; or

(e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW((.));

(9) Have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(10) Have none of the negative actions listed in WAC 388-76-10180;

(11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112A WAC; and

(12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager:

(1) Meets ((~~all minimum~~)) the relevant qualifications ((~~for providers, entity representatives, or resident managers~~)) for their role listed in WAC 388-76-10130; and

(2) Has a current valid cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112A WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10950 Remedies—History and actions by individuals. The department will consider the history and actions of the following individual or combination of individuals when imposing remedies:

(1) Applicant;

(2) Provider;

(3) Entity representative;

(4) Person affiliated with the applicant;

(5) Resident manager;

(6) A partner, officer, director or managerial employee of the entity;

(7) Spouse of the provider or entity representative;

(8) An owner:

(a) Of fifty-one percent or more of the entity; or

(b) Who exercises control over the daily operations of the home((.));

(9) A caregiver; ((~~or~~))

(10) Any person who:

(a) Has unsupervised access to residents in the home; ((~~and~~)) or

(b) Lives in the home but who is not a resident; or

(11) Any affiliated entities.

NEW SECTION

WAC 388-76-10201 Succession plan. (1) The adult family home must have a written plan addressing how they will continue to meet the requirements of this chapter and provide care and services to residents in the event that the provider or entity representative is unable to fulfill their duties in the home and make it available upon request of the department.

(2) If an emergency or other exceptional circumstance requires a change of ownership due to the inability of a provider to continue to operate the home, an applicant who meets the qualifications to be a provider may apply for a provisional license that would allow the home to continue to operate. The applicant must also apply for a change of ownership at the same time. The department will have the discretion to determine if the circumstances warrant a provisional license.

WSR 19-22-001
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed October 24, 2019, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-073.

Title of Rule and Other Identifying Information: WAC 4-30-112 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?

Hearing Location(s): On January 31, 2020, at 9:00 a.m., at the DoubleTree by Hilton Hotel, Seattle Airport, Cascade Room 13, 18740 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: January 31, 2020.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 29, 2020.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by January 29, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-112 to (1) rename the rule; (2) eliminate the firm licensing requirement for certified public accountant (CPA) firms that do not perform or offer attest or compilation services; and (3) align the rule with the firm licensing requirements per chapter 18.04 RCW, which were changed with the passage of HB 1208.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles E. Satterlund, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-586-0785.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with the changes in CPA firm licensing. Costs will actually go down as fewer firms will be required to hold a CPA firm license.

October 24, 2019
Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-112 ((~~Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state?~~)) In state and out-of-state firm licensing requirements. (1) A firm license must be obtained from the board if ((~~any of the following criteria apply:~~

~~(a)~~)) the firm has an office in this state and performs attest or compilation services for clients in this state((~~; or~~

~~(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants~~)).

(2) A firm license is not required for a firm that does not have an office in this state but offers or renders attest services described in RCW 18.04.025(1), and meets the requirements listed in RCW 18.04.195 (1)(a)(iii)(A) through (D).

(3) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

(4) As a condition of this privilege, any nonresident firm meeting the requirement of subsection (2) or (3) of this section is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1)((~~(c)~~)) of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

WSR 19-22-019
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 28, 2019, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-053.

Title of Rule and Other Identifying Information: WAC 182-503-0010 Washington apple health—Who may apply.

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 11, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by November 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this section to correct a WAC cross-reference and remove age restrictions on tax dependent individuals. This change reflects agency policy that the agency supports the applications of individuals who are tax dependent regardless of age.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; 42 C.F.R. 435.4.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: James Brackett, P.O. Box 45534, Olympia, WA 98504-2716 [98504-5534], 360-725-1513.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule applies to clients and does not impose costs on any business.

October 28, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-12-017, filed 5/30/17, effective 6/30/17)

WAC 182-503-0010 Washington apple health—Who may apply. (1) You may apply for Washington apple health for yourself.

(2) You may apply for apple health for another person if you are:

(a) A legal guardian;

(b) An authorized representative (as described in WAC ((~~182-500-0010~~)) 182-503-0130);

(c) A parent or caretaker relative of a child age eighteen or younger;

(d) A tax filer applying for a tax dependent ((~~age eighteen or younger~~));

(e) A spouse; or

(f) A person applying for someone who is unable to apply on their own due to a medical condition and who is in need of long-term care services.

(3) If you reside in an institution of mental diseases (as defined in WAC 182-500-0050(1)) or a public institution (as defined in WAC 182-500-0050(4)), including a Washington state department of corrections facility, city, tribal, or county jail, or secure community transition facility or total confinement facility (as defined in RCW 71.09.020), you, your representative, or the facility may apply for you to get the apple health coverage for which you are determined eligible.

(4) You are automatically enrolled in apple health and do not need to submit an application if you are a:

(a) Supplemental security income (SSI) recipient;

(b) Person deemed to be an SSI recipient under 1619(b) of the SSA;

(c) Newborn as described in WAC 182-505-0210; or

(d) Child in foster care placement as described in WAC 182-505-0211.

(5) You are the primary applicant on an application if you complete and sign the application on behalf of your household.

(6) If you are an SSI recipient, then you, your authorized representative as defined in WAC 182-500-0010, or another person applying on your behalf as described in subsection (2) of this section, must turn in a signed application to apply for long-term care services as described in WAC 182-513-1315.

WSR 19-22-022
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 28, 2019, 1:24 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-330-110 and 220-330-140 from WSR 19-18-070 filed on September 3, 2019.

Please let Jacalyn M. Hursey know if you have any questions or need additional information.

Jacalyn M. Hursey
Rules Coordinator

WSR 19-22-030
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed October 30, 2019, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-029.

Title of Rule and Other Identifying Information: WAC 314-55-105 Packaging and labeling requirements, the Washington state liquor and cannabis board (board) proposes new sections and amendments to existing rule that will remove the requirement for measuring devices for marijuana-infused liquid edibles; reduce plastic package thickness for marijuana-infused edibles; and implement the requirements and directives of ESSB 5298 (chapter 393, Laws of 2019). The board also proposes nonsubstantive technical and clarifying revisions to WAC 314-55-077 (8) and (9).

Hearing Location(s): On December 11, 2019, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: December 18, 2019.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by December 11, 2019.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by December 4, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules significantly restructure and revise existing rules for marijuana packaging and labeling by distinguishing each

product by type, and clearly listing the packaging and labeling requirements for each type. The rule proposal describes new provisions that include packaging thickness reduction from four mil to two mill [mil] or greater in thickness; provides that packaging may include a measuring cup or dropper, and that hash marks on the bottle or package qualify as a measuring device; reaffirms and clarifies parameters around labeling that may be appealing to persons under the age of twenty-one; and adds the allowance of structure and function claims describing the role of the product to maintain the structure or any function of the body, along with a statutorily required disclaimer statement, consistent with the requirements of ESSB 5298 now codified in chapter 69.50 RCW, and effective in January 1, 2020.

Reasons Supporting Proposal: Washington state marijuana packaging and labeling regulations have evolved since their initial promulgation in 2013. Originally designed to provide a basic framework, requirements included, but were not limited to what products must be packaged in child-resistant containers, what warning language needed to be on accompanying material, and what traceability information needed to be on every product label. Over time, rules related to packaging and labeling of marijuana products have been revised in response to legislation, prevention concerns, and industry growth. Other factors, such as the use of biodegradable packaging, and reduction of the market's environmental impacts suggest that additional options to support industry sustainability and product safety are needed. Protecting children and youth from accidental exposure to marijuana products continues to be a priority shared by the industry, the prevention community, the Board and many others. Assuring that marijuana product packaging is designed and constructed to be significantly difficult for children and youth to open, and requiring labeling that clearly communicates the adult nature of the product also continue to be shared priorities. This proposal reflects those priorities, as well as the outcome of an inclusive and engaged rule development process designed to balance several competing interests. These rules are needed to set enforceable standards consistent with legislative and policy directives, affirmatively respond to two rule petitions, and to clarify existing rule.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Statute Being Implemented: ESSB 5298 (chapter 393, Laws of 2019).

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation and Enforcement: Becky Smith, Executive Director, 1025 Union Avenue, Olympia, WA 98501, 360-664-1753.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iv) because the rules only clarify language without changing its effect. Additionally, a cost-benefit analysis is not needed under RCW 34.05.328 (5)(b)(v) because the content of the rules are explicitly and specifically dictated by statute.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3): WAC 314-55-077 (8), 314-55-077(9), 314-55-105(1), (2), (3), (4), (5), (6), (7), (8), (9), and (10).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule proposal does not create any additional compliance costs, nor does it create any additional administrative, or regulatory burden. Rather, shifting the provision of a measuring cup for marijuana infused liquid edible products from a requirement to an option is anticipated to result in compliance cost reduction. Similarly, reducing packaging thickness from 4 mil to no less than 2 mil is anticipated to result in compliance cost reduction.

Additionally, the proposed, significant restructuring of WAC 314-55-105 is anticipated to result in ease of use, reduced administrative burden, and increased compliance success.

A copy of the detailed cost calculations may be obtained by contacting Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

October 30, 2019
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) **Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The ((~~WSLCB~~)) board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The ((~~WSLCB~~)) board may reopen the

marijuana processor application window at subsequent times when the ((~~WSLCB~~)) board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the ((~~WSLCB~~)) board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5)(a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) **Recipes, product, packaging, and labeling approval.**

(a) A marijuana processor licensee must obtain label and packaging approval from the ((~~WSLCB~~)) board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the ((~~WSLCB~~)) board for approval. More information on the product, packaging, and label review process is available on the ((~~WLSCB's web site at www.lcb.wa.gov~~)) boards website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the ((~~WSLCB~~)) board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the ((~~WSLCB~~)) board or its designee.

(c) If the ((~~WSLCB~~)) board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must((~~:~~

~~(a)~~)) be homogenized to ensure uniform disbursement of cannabinoids ((~~throughout the product; and~~

~~(b) Until January 1, 2019, prominently display on the label "This product contains marijuana."~~)).

(9) A marijuana processor ((~~is limited in the types of~~)) may infuse food or drinks ((~~they may infuse~~)) with marijuana((~~. Marijuana-infused products that~~)), provided that:

(a) The product or products do not require cooking or baking by the consumer ((~~are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.~~

~~(a)~~));

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(((~~(b)~~)) (11) Other food items that may not be infused with marijuana to be sold in a retail store include:

(((~~(i)~~)) (a) Any food that has to be acidified to make it shelf stable;

(((~~(ii)~~)) (b) Food items made shelf stable by canning or retorting;

(((~~(iii)~~)) (c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(((~~(iv)~~)) (d) Fruit or vegetable butters;

(((~~(v)~~)) (e) Pumpkin pies, custard pies, or any pies that contain egg;

(((~~(vi)~~)) (f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(((~~(vii)~~)) (g) Dried or cured meats.

(((~~(c)~~)) (h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(((~~(d)~~)) (i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(((~~(e) Per~~)) (12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

(((f))) The ((WSLCB)) board may designate other food items that may not be infused with marijuana.

(((10))) (13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(((11))) (14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(((12))) (15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 18-11-005, filed 5/2/18, effective 1/1/19)

WAC 314-55-105 Marijuana product packaging and labeling ((requirements)). (((1) **Packaging requirements.**

(a) **General packaging requirements applying to all marijuana products.** Any container or packaging containing usable marijuana, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

(b) **Additional product specific packaging requirements.** The following product-specific packaging requirements apply to each of the following product types in addition to the packaging requirements provided in (a) of this subsection:

(i) **Marijuana infused products general requirements.**

(A) All marijuana-infused products for oral ingestion must be packaged pursuant to the following requirements:

(I) Child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or

(II) Plastic four mil or greater in thickness and be heat sealed with no easy open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure, except as provided in (b)(i)(A)(III) and (B) of this subsection.

(III) Marijuana-infused products for oral ingestion in liquid form where a single serving is contained with the package may be sealed using a metal crown cork style bottle cap. Marijuana-infused products for oral ingestion in liquid form that include more than one serving must be packaged with a resealable closure or cap.

(B) Marijuana-infused solid edible products.

(I) If there is more than one serving of marijuana-infused solid edible products in the package, each serving must be packaged individually in child resistant packaging as provided in (b)(i) of this subsection and placed in the outer package except as provided below.

(II) Products such as capsules, lozenges, and similar products approved by the WSLCB on a case-by-case basis may be packaged loosely within a resealing outer package that is child resistant in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act.

(C) Marijuana-infused liquid edible products. Packages containing more than one serving of marijuana-infused liquid edible product must:

(I) Have a resealing cap or closure; and

(II) Include a measuring device such as a measuring cap or dropper with the package containing the marijuana-infused liquid edible product. Hash marks on the bottle or package do not qualify as a measuring device.

(ii) **Marijuana concentrates**. Marijuana concentrates must be packaged:

(A) In child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act; or

(B) Plastic four mil or greater in thickness, heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure.

(2) **Labeling requirements**.

(a) **Marijuana and marijuana product labels generally.** The following label requirements apply to all marijuana products:

(i) Usable marijuana, marijuana concentrates, and marijuana-infused products must not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(ii) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(iii) All information, warning statements, and language required in this section must not be covered or obscured in any way.

(iv) Labels affixed to the container or package containing marijuana or marijuana products sold at retail must include:

(A) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(B) The unique identifier number generated by the WSLCB's traceability system. This must be the same number that appears on the transport manifest;

(C) If more than one serving is in a package, the label must prominently display the number of servings in the package and the amount of product per serving;

(D) Net weight in ounces and grams or volume as applicable;

(E) THC concentration (delta-9 tetrahydrocannabinol) listed as total THC and activated THC-A and CBD concentration (cannabidiol) listed as total CBD and activated CBD-A;

(v) Labels of usable marijuana and marijuana products sold at retail in the state of Washington must not contain any statement, depiction, or illustration that:

(A) Is false or misleading;

(B) Promotes over consumption;

(C) Represents the use of marijuana has curative or therapeutic effects;

(D) Depicts a child or other person under legal age consuming marijuana, or includes:

(I) Objects such as toys, characters suggesting the presence of a child, or any other depiction or illustration designed in any manner to be especially appealing to children or other persons under twenty-one years of age; or

(II) Is designed in any manner that is especially appealing to children or other persons under twenty-one years of age.

(b) **Standard warnings required on all labels.** The following warning statements must be included on labels of all marijuana and marijuana products. The warning statements required below must be of a size to be legible and readily visible to a consumer inspecting a package and must not be covered or obscured in any way.

(i) "Warning - May be habit forming";

(ii) "Unlawful outside Washington State";

(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana"; and

(iv) The marijuana universal symbol as provided in WAC 314-55-106.

(c) **Additional product specific labeling requirements.** In addition to the labeling requirements in subsection (3)(a) and (b) of this section, the following product-specific labeling requirements apply to each of the following product types and must be present on labels when offered for sale at retail:

(i) **Usable marijuana, including marijuana mix.** The statement "Smoking is hazardous to your health."

(ii) **Marijuana concentrates, marijuana infused extract for inhalation, and infused marijuana mix.**

(A) If solvents were used to create the concentrate or extract, a statement that discloses the type of extraction method, including any solvents or gases used to create the concentrate or extract; and

(B) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(iii) **Marijuana-infused products** (except for marijuana-infused products for topical application as provided in (c)(iv) of this subsection).

(A) Serving size and the number of servings contained within the unit;

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(C) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract; and

(D) The following sentence: "CAUTION: Intoxicating effects may be delayed by 2+ hours."

(iv) **Marijuana-infused products for topical application.**

(A) The statement "DO NOT EAT" in bold, capital letters; and

(B) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(d) **Permitted optional information that may be included on labels.**

(i))) (1) The following definitions apply to this section, unless the context clearly indicates otherwise:

(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that meets any of the following criteria:

(i) The use of comically exaggerated features;

(ii) The attribution of human characteristics to animals, plants, or other objects;

(iii) The attribution of animal, plant, or other object characteristics to humans;

(iv) The attribution of unnatural or extra-human abilities.

(b) "Child resistant packaging" means packaging that is used to reduce the risk of poisoning in persons under the age of twenty-one through the ingestion of potentially hazardous items including, but not limited to, marijuana concentrates, useable marijuana, and marijuana-infused products.

(c) "Especially appealing to persons under the age of twenty-one" means a product or label that includes, but is not limited to:

(i) The use of cartoons;

(ii) Bubble-type or other cartoon-like font;

(iii) A design, brand, or name that resembles a noncannabis consumer product that is marketed to persons under the age of twenty-one;

(iv) Symbols or celebrities that are commonly used to market products to persons under the age of twenty-one;

(v) Images of persons under the age of twenty-one; or

(vi) Similarities to products or words that refer to products that are commonly associated or marketed to persons under the age of twenty-one.

(d) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent, consistent with RCW 69.50.101(z).

(e) "Marijuana edible" means a marijuana-infused product as defined in RCW 69.50.101(ff).

(f) "Marijuana topical" or "topical" means any product containing parts of the cannabis plant that is intended for application to the body's surface including, but not limited to, lotions, ointments, salves, gels, or cream that are not intended for ingestion, inhalation, or insertion by humans or animals.

(g) "Structure and function claims" mean a description of the role of a marijuana product intended to affect normal structure and function in humans, characterized by the means by which a marijuana product acts to maintain such structure or function, or describe the general well-being from consumption of a marijuana product.

(h) "Useable marijuana" means dried marijuana flowers consistent with RCW 69.50.101(ww). The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(2) **Marijuana concentrates.** The following standards apply to all packaging and labeling of marijuana concentrates:

(a) Containers or packaging containing marijuana concentrates must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana concentrate.

(b) Marijuana concentrates must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana concentrates.

(c) Marijuana concentrates must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Marijuana concentrate labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Marijuana concentrate labels must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the marijuana producer and processor;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This is the same number that appears on the transport manifest;

(iv) The serving or draw size and the number of servings contained with the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) The net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) If solvents were used to create concentrate or extract, a statement that discloses the type of extraction method, including in solvents or gases used to create the concentrate; and

(ix) A complete list of any other chemicals, compounds, additives, thickening agents, terpenes, or other substances used to produce or added to the concentrate or extract at any point during production. A copy of the complete list of chemicals, compounds, additives, thickening agents, terpenes, or other substances must be kept and maintained at the facility in which the marijuana concentrates are processed.

(f) Marijuana concentrate labels may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana; or

(v) Is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following statements must be included on all marijuana concentrate labels:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle while under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(h) Product labeling for marijuana concentrates identified as compliant marijuana product under RCW 69.50.375 (4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must state, "This statement has not been

evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product that is not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(3) **Marijuana edibles in solid form.** The following standards apply to all packaging and labeling of marijuana edibles in solid form:

(a) Containers or packaging containing marijuana edibles in solid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in solid form.

(b) Marijuana edibles in solid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in solid form.

(c) Marijuana edibles in solid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for marijuana edibles in solid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for marijuana edibles in solid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) A list of ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(ix) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that were added to the extract.

(f) Labels for marijuana edibles in solid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all marijuana edibles in solid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for marijuana edibles in solid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(4) **Marijuana edibles in liquid form.** The following standards apply to all packaging and labeling of marijuana edibles in liquid form:

(a) Containers or packaging containing marijuana edibles in liquid form must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana edibles in liquid form.

(b) Marijuana edibles in liquid form must be packaged:

(i) In child resistant packaging consistent with 16 C.F.R. Part 1700, Poison Prevention Packaging Act; or

(ii) In plastic that is two mil or greater in thickness, heat sealed without an easy-open tab, dimple, corner, or flap that will protect persons under the age of twenty-one from accidental exposure to marijuana edibles in liquid form.

(iii) Marijuana edibles in liquid form that include more than one serving must be packaged with a resealable closure or cap. Marijuana edibles in liquid form may include a measuring device such as a measuring cup or dropper. Hash marks on the bottle or package qualify as a measuring device.

(c) Marijuana edibles in liquid form must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(d) Labels for marijuana edibles in liquid form must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(e) Labels for marijuana edibles in liquid form must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) A list of all ingredients in descending order of predominance by weight or volume as applicable and a list of major food allergens as defined in the Food Allergen Labeling and Protections Act of 2004;

(ix) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract.

(f) Labels for marijuana edibles in liquid form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(g) The following warning statements must be included on all labels for all marijuana edibles in liquid form. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Caution: Intoxicating effects may be delayed by 2+ hours."

(h) Product labeling for marijuana edibles in liquid form identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(i) Where there is one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(j) Where there is more than one statement made under (h) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(5) **Useable marijuana.** The following standards apply to all packaging and labeling of useable marijuana:

(a) Containers or packaging containing useable marijuana must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the useable marijuana.

(b) Useable marijuana must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Useable marijuana must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for useable marijuana must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot number of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving or draw size contained within the unit. If more than one serving is in a package, the label must promi-

nently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use.

(e) Labels for useable marijuana may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all useable marijuana. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for useable marijuana identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(6) **Marijuana mix.** Marijuana mix is defined in WAC 314-55-010(22) as an intermediate lot that contains multiple strains of useable marijuana and is chopped or ground so no particles are greater than 3 mm. The following standards apply to all packaging and labeling of marijuana mix:

(a) Containers or packaging containing marijuana mix must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana mix.

(b) Marijuana mix must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana mix must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana mix must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The serving size and the number of servings contained within the unit. If more than one serving is in a package, the label must prominently display the serving size, the number of servings in the package and the amount of product per serving;

(v) Net weight in ounces and grams or volume as applicable;

(vi) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vii) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(viii) If solvents were used, a statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or added to the extract;

(ix) Any other chemicals or compounds used to produce or were added to the concentrate or extract.

(e) Labels for marijuana mix form may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana mix. The following warning statements must legible, unobscured, and visible to the consumer:

(i) "Warning - May be habit forming;"

(ii) "Unlawful outside Washington State;"

(iii) "It is illegal to operate a motor vehicle under the influence of marijuana;"

(iv) The marijuana universal symbol as provided in WAC 314-55-106; and

(v) "Smoking is hazardous to your health."

(g) Product labeling for marijuana mix identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(7) **Marijuana topicals.** The following standards apply to all packaging and labeling of marijuana topicals:

(a) Containers or packaging containing a marijuana topical must protect the product from contamination. Containers or packaging must not impart any toxic or harmful substance to the marijuana topical.

(b) Marijuana topicals must not be labeled as organic unless permitted by the U.S. Department of Agriculture consistent with the Organic Foods Production Act.

(c) Marijuana topicals must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling regulation adopted in chapter 16-662 WAC.

(d) Labels for marijuana topicals must clearly and visibly provide all of the following information:

(i) The business or trade name and the nine digit Washington state unified business identifier (UBI) number of the licensees that produced and processed the marijuana or marijuana products;

(ii) The lot numbers of the product;

(iii) The unique identifier number generated by the board's traceability system. This must be the same number that appears on the transport manifest;

(iv) The label must prominently display the net weight in ounces and grams or volume as applicable, and may not exceed serving and transaction limits as described in WAC 314-55-095;

(v) Total THC (delta-9-tetrahydrocannabinol) meaning the concentration of THC and THCA, total CBD (cannabidiol) meaning the concentration of CBDA and CBD, using the formulas referenced in WAC 314-55-102;

(vi) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use; and

(vii) A list of all ingredients in descending order of predominance by weight or volume as applicable.

(e) Labels for marijuana topicals may not contain any statement, depiction, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

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

(iv) Depicts a person under the age of twenty-one consuming marijuana, or is especially appealing to persons under twenty-one years of age as defined in subsection (1)(c) of this section.

(f) The following warning statements must be included on all labels for all marijuana topicals. The following warning statements must be legible, unobscured, and visible to the consumer:

(i) "Unlawful outside Washington State;"

(ii) The marijuana universal symbol as provided in WAC 314-55-106; and

(iii) "**DO NOT EAT**" in bold, capital letters.

(g) Product labeling for marijuana topicals identified as compliant marijuana product under RCW 69.50.375(4) and chapter 246-70 WAC may include:

(i) A structure or function claim describing the intended role of the product to maintain the structure or any function of the body; or

(ii) Characterization of the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(iii) Any statement made under this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(h) Where there is one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided it is not false or misleading, the disclaimer must state, "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(i) Where there is more than one statement made under (g) of this subsection, or there is a warning describing the psychoactive effects of the marijuana product, provided they are not false or misleading, the disclaimer must state, "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(8) **Optional label information.** Optional label information includes the following: Harvest date, "best by" date, and manufactured dates ((~~are optional information that may be placed on labels.~~

~~(ii) Other cannabinoids and terpenes not required to be placed on the label by this section may be included on the label if:~~

~~(A) The producer or processor has test results from a certified third-party lab to support the claim; and~~

~~(B) The lab results are made available to the consumer upon request~~)).

(((~~(3)~~))) (9) **Accompanying materials.** ((~~The following~~)) Accompanying materials must be provided with a marijuana product or made available to the consumer purchasing marijuana products ((~~at retail~~)).

A producer or processor ((~~may~~)) must provide ((~~this~~)) the following product-specific information, for as long as the product is for sale, through an internet link, web address, or QR code on the product label ((~~so long as the information particular to that product as required below is maintained and accessible to a consumer for as long as the product is available for sale at retail.~~)) as follows:

(a) A statement ((~~that discloses~~)) disclosing all pesticides applied to the marijuana plants and growing medium during production of the ((~~usable~~)) useable marijuana or the base marijuana used to create the concentrate or the extract added to infused products;

(b) A list disclosing all of the chemicals, compounds, additives, thickening agents, terpenes, or other substances added to any marijuana concentrate during or after production.

(((~~(4)~~))) (10) **Upon request materials.** ((~~Upon the request of a retail customer, a retailer must disclose the name of the certified lab that conducted and the results of the required quality assurance tests for any marijuana or marijuana product the customer is purchasing or considering purchasing.~~

~~(5) For the purposes of this section, the following definitions apply:~~

~~(a) "Cartoon" means any drawing or other depiction of an object, person, animal, creature, or any similar caricature that satisfies any of the following criteria:~~

~~(i) The use of comically exaggerated features;~~

~~(ii) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or~~

~~(iii) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds, or transformation.~~

~~(b) "Especially appealing to children" means a product, label, or advertisement that includes, but is not limited to, the following:~~

~~(i) The use of cartoons;~~

~~(ii) Bubble-type or other cartoon-like or action font;~~

~~(iii) The use of bright colors similar to those used on commercially available products intended for or that target youth or children;~~

~~(iv) A design, brand, or name that resembles a noncannabis consumer product of the type that is typically marketed to minors;~~

~~(v) Symbols or celebrities that are commonly used to market products to minors;~~

~~(vi) Images of minors; or~~

~~(vii) Similarities to products or words that refer to products that are commonly associated with minors or marketed to minors.~~)) A consumer may request the name of the certified lab and quality assurance test results for any marijuana or marijuana product. A retailer must provide the information upon request.

WSR 19-22-040
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 31, 2019, 4:01 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SWCAA 476-010 Purpose, this is an existing rule section identifying the purpose of the asbestos regulation.

SWCAA 476-030 Definitions, this is an existing section containing definitions for terms and words directly relevant to the regulation.

SWCAA 476-040 Asbestos Project Requirements, this is an existing section describing the requirements for asbestos projects.

SWCAA 476-050 Notification Requirements and Fees, this is an existing section containing notification requirements for asbestos projects and applicable fees.

SWCAA 476-060 Procedures for Asbestos Projects, this is an existing section describing required measures to control emissions from asbestos projects.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material, this is an existing section containing requirements for disposal and storage of asbestos-containing waste material.

Hearing Location(s): On January 14, 2020, at 6:00 p.m., at the Southwest Clean Air Agency (SWCAA) business office.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email jerry@swcleanair.org, fax 360-576-0925, by January 17, 2020.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 x110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by January 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 476-010, the proposed rule change removes encapsulation from the list of regulated activities.

SWCAA 476-030, the proposed rule change reorders two definitions and makes formatting changes to existing definitions.

SWCAA 476-040, the proposed rule change corrects sectional references, replaces the term Agency with the term SWCAA, removes the Exceptions paragraph, revises bulk sampling requirements and makes minor text edits.

SWCAA 476-050, the proposed rule change clarifies the need for SWCAA approval for project notices, replaces the term Agency with the term SWCAA and makes minor text edits.

SWCAA 476-060, the proposed rule change adds a requirement for worker certification and identification cards and replaces the term Agency with the term SWCAA.

SWCAA 476-070, the proposed rule change replaces the term Agency with the term SWCAA.

Reasons Supporting Proposal: The proposed changes are necessary to support SWCAA's implementation of its local asbestos program.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x122; and Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x130.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995 for this action.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141 (1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 31, 2019
Uri Papish
Executive Director

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 19-23 issue of the Register.

WSR 19-22-043
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 1, 2019, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-099.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-482-0005 How does being a student of higher education impact my eligibility for Washington basic food program?

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than December 11, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 10, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are necessary for basic food eligibility determinations involving students of higher education who are "anticipating participation" in a work study position, as defined in RCW 43.20A.760.

Reasons Supporting Proposal: The amendatory language is necessary to implement 2SHB 1893 (chapter 407, Laws of 2019) and is currently in place under emergency rule, effective July 28, 2019, filed as WSR 19-16-011 on July 25, 2019.

Statutory Authority for Adoption: RCW 43.20A.760, 74.04.500, 74.04.510, 74.08A.120.

Statute Being Implemented: RCW 43.20A.760.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ivette Dones-Figueroa, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4651.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

October 30, 2019
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-19-025, filed 9/12/18, effective 10/13/18)

WAC 388-482-0005 How does being a student of higher education ((~~impact~~)) affect my eligibility for the Washington basic food program? (1) For basic food, we consider you a student of higher education if you are:

(a) Age eighteen through forty-nine;

(b) Physically and mentally able to work (we determine if you are unable to work);

(c) Enrolled in an institution of higher education at least half-time as defined by the institution; and

(d) Enrolled in coursework considered to be higher education.

(2) An institution of higher education is:

(a) Any educational institution that requires a high school diploma or high school equivalency certificate;

(b) A business, trade, or vocational school that requires a high school diploma or high school equivalency; or

(c) A two-year or four-year college or university that offers a degree but does not require a high school diploma or high school equivalency.

(3) If you are a student of higher education, you must also meet one of the following conditions to be eligible for basic food:

(a) You have paid employment and work an average of at least twenty hours per week each month;

(b) You are self-employed, work, and earn at least the amount you would earn working an average of twenty hours per week at the federal minimum wage each month; or

(c) You were participating in a state or federal work study program during the regular school year.

(i) To qualify under this condition, you must:

(A) Have approval for work study at the time of application for basic food;

(B) Have work study that is approved for the school term; and

(C) Anticipate actually working during that time.

(ii) The work study exemption begins:

(A) The month in which the school term starts; or

(B) The month work study is approved, whichever is later.

(iii) Once begun, the work study exemption shall continue until:

(A) The end of the month in which the school term ends; or

(B) We find out you refused a work study assignment.

(d) You are responsible for more than half the care of a dependent person in your assistance unit (AU) who is age five or younger;

(e) You are responsible for more than half the care of a dependent person in your AU who is between age six and eleven, if we have determined that there is not adequate child care available during the school year to allow you to:

(i) Attend class and satisfy the twenty-hour work requirement; or

(ii) Take part in a work study program.

(f) You are a single parent responsible for the care of your natural, step, or adopted child who is eleven or younger;

(g) You are an adult who has the parental responsibility of a child who is age eleven or younger if none of the following people live in the home:

(i) The child's parents; or

(ii) Your spouse.

(h) You participate in the WorkFirst program under WAC 388-310-0200;

(i) You receive TANF or SFA benefits;

(j) You attend an institution of higher education through:

(i) The Workforce Investment Act (WIA);

(ii) The basic food employment and training program under chapter 388-444 WAC;

(iii) An approved state or local employment and training program; or

(iv) Section 236 of the Trade Act of 1974.

(4) ((~~If you are a student of higher education and the only reason you are eligible for basic food is because you are participating in work study, you are only eligible while you work and receive money from work study. If your work study stops during the summer months, you must meet another condition to be an eligible student during this period.~~

~~(5)~~)) If you are a student of higher education, your status as a student:

(a) Begins the first day of the school term; and

(b) Continues through vacations. This includes the summer break if you plan to return to school for the next term.

(((~~(6)~~)) (5) We do not consider you a student of higher education if you:

(a) Graduate;

(b) Are suspended or expelled;

(c) Drop out; or

(d) Do not intend to register for the next normal school term other than summer school.

WSR 19-22-052
PROPOSED RULES
BOARD OF TAX APPEALS

[Filed November 4, 2019, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-063.

Title of Rule and Other Identifying Information: WAC 456-11-015 Record evidence.

Hearing Location(s): On December 11, 2019, at 11:00 a.m., at 1110 Capitol Way South, Suite 308, Olympia, WA 98501.

Date of Intended Adoption: December 11, 2019.

Submit Written Comments to: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, email bta@bta.wa.gov, fax 360-586-9020, by December 9, 2019.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by December 9, 12019 [2019].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of tax appeals proposes this new WAC to clarify what is considered a part of the board's official record.

Statutory Authority for Adoption: RCW 82.03.170.

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

Name of Proponent: Washington state board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446; and Enforcement: Kate Adams, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446.

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

A cost-benefit analysis is not required under RCW 34.05.328. Agency exempt under RCW 34.05.328 (5)(b)(iii).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The regulation applies only if a business files an annual property tax appeal. The proposed rule does not impose more than a minor cost on such businesses. Additionally, it does not create any new filing or recordkeeping requirements that have not already been established as a procedural requirement for presenting evidence at the board of tax appeals.

November 4, 2019
Kate Adams
Executive Director

Chapter 456-11 WAC

HEARINGS—PRACTICE AND PROCEDURE

NEW SECTION

WAC 456-11-015 Record evidence. (1)(a) Except as provided in (b) of this subsection, the board makes its own findings and issues its decision on the evidence before it. The board does not review the decision of a board of equalization or the department of revenue for error.

(b) The following types of agency actions are reviewed for error without a de novo hearing.

(i) Appeals from a denial of a reconvene request.

(ii) Appeals based on procedural errors.

(2) The board will not consider evidence from the written record of a county board of equalization proceeding, except as provided in this rule. The board does not receive or consider any audio recordings of a county board of equalization proceeding.

(3) A party may request by motion, no later than the deadline set by the board for submitting new evidence, that the board consider evidence from the written record of a county board of equalization proceeding. The motion must be in writing and must identify the evidence to be considered by:

(a) Description or title of evidence;

(b) Date, if any;

(c) Page number, if any; and

(d) Other identifying information as may be required by the board.

(4) Upon request, the board will provide the parties with an electronic copy of the written record of a county board of equalization proceeding. Paper copies may be requested at the same cost per page as for a public record request.

(5) The board does not receive, and will not consider, the written record or any audio recording of any department of revenue proceeding.

WSR 19-22-055
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed November 4, 2019, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-016.

Title of Rule and Other Identifying Information: Employment—Conviction records: Review of refusal to alter record.

Hearing Location(s): On December 12, 2019, at 9:00 a.m., at 106 11th Avenue S.W., Room 1011, Olympia, WA 98504.

Date of Intended Adoption: December 13, 2019.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Avenue S.W., Olympia, WA 98504, email wsprules@wsp.wa.gov, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, email wsprules@wsp.wa.gov, by December 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend language in WAC 446-20-160 to specify that RCW 43.43.730; *de novo* hearing process applies to the Washington state patrol (WSP), allowing an individual to appear after a refusal by WSP to alter a record.

Reasons Supporting Proposal: Provide clarification regarding the hearing process.

Statutory Authority for Adoption: Chapters 10.97 and 43.43 RCW.

Statute Being Implemented: RCW 43.43.730.

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

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: WSP, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 1, 2019
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-20-160 Review of refusal to alter record. A person who is the subject of a criminal record and who disagrees with the refusal of the agency maintaining or submitting the record to correct, complete, or delete the record, may request a review of the refusal within twenty business days of

the date of receipt of such refusal. The request for review must be in writing, and must be made by the completion of a form substantially equivalent to that set forth in WAC 446-20-410. If review is requested in the time allowed, the head of the agency whose record or submission has been challenged must complete the review within thirty days and make a final determination of the challenge. The head of the agency may extend the thirty-day period for an additional period not to exceed thirty business days. If the head of the agency determines that the challenge should not be allowed, he or she must state his or her reasons in a written decision, a copy of which must be provided to the subject of the record. Denial by the agency head will constitute a final decision under RCW ((~~34.04.130~~)) 34.05.570. Notwithstanding this section, RCW 43.43.730 governs an individual's request to the Washington state patrol identification and criminal history section to purge, modify, or supplement that individual's criminal history record information on file with the Washington state patrol identification and criminal history section.

WSR 19-22-059
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed November 4, 2019, 9:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-104.

Title of Rule and Other Identifying Information: Chapter 16-501 WAC, WSDA Procedural rules—Commodity boards or commissions.

Hearing Location(s): On December 10, 2019, at 11:00 a.m., at the Washington Department of Agriculture (WSDA), Conference Room 205, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: December 13, 2019.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., December 10, 2019.

Assistance for Persons with Disabilities: Contact Gloriann Robinson, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388 or 711, email grobinson@agr.wa.gov, by December 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules establish the means by which agricultural commodity commissions fund the department's commodity commissions coordinator position. Proposed amendments clarify definitions; clarify that commodity commissions fund one-half full time equivalent employee; clarify on what a commission's contribution is based and the examples that explain how the total financial contribution is determined; amends the timeline that the department will determine the amount necessary to fund the commodity commissions coordinator position, bill the boards/commissions for their share of the total financial contribution and provide additional time for a commission to remit the billed amount to the department; and increase the rule's clarity and usability.

Reasons Supporting Proposal: Making clarifications to the rules remove unintentional ambiguities, promote and increase clarity and usability, and are reflective of current practices.

Statutory Authority for Adoption: RCW 43.23.033.

Statute Being Implemented: RCW 43.23.033.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Teresa Norman, 1111 Washington Street S.E., Olympia, 360-902-2043; and Enforcement: Henri Flournoy, 1111 Washington Street S.E., Olympia, 360-902-1809.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Amendments to the definitions and the explanation of how the total financial contribution is determined are exempt under RCW 34.05.310 (4)(d) because they clarify the rule language without changing its effect. Amendments to the timeline used by the department to determine the amount necessary to fund the commodity commissions coordinator position, bill the boards/commission for their share of the total financial contribution and for the boards/commissions to remit the amount billed are exempt under RCW 34.05.310 (4)(b) because they only relate to internal government operations.

November 4, 2019
Jason Ferrante
Associate Deputy Director

AMENDATORY SECTION (Amending WSR 17-17-158, filed 8/23/17, effective 9/23/17)

WAC 16-501-005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout the chapter:

"((~~Assessment level~~)) Annual assessment" means the total annual assessment amount collected in a twelve-month period by an agricultural commodity board or commission under the provisions of its marketing order or authorizing statute. For the Washington beer commission, "annual assessment ((~~level~~))" includes net proceeds collected from commission-sponsored beer festivals in addition to the total annual assessment collected by the commission.

"Department" means the Washington state department of agriculture (((~~WSDA~~))).

"Total financial contribution" means the contributions from all agricultural commodity boards and commissions to cover ((~~one-half~~)) the annual salary and benefits of the department's commodity commission coordinator for commodity boards and commissions plus the annual costs for goods and services, travel, training and equipment necessary to support the commodity commission coordinator. The total financial contribution is one-half full-time equivalent employee.

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

WAC 16-501-010 Commodity commission financial contribution. (1) Under the provisions of RCW ((~~43.23~~)) 43.23.033, the director may establish, by rule, a method to fund staff support for all commodity boards and commissions.

(2) ((~~Before July 1 of each fiscal year~~)) On or around September 1st, the department will determine the ((~~total financial contribution required from all commodity boards or commissions and calculate, according to the provisions of WAC 16-501-015, each board or commission's share of that total contribution~~)) amount necessary to fund the commodity commission coordinator position.

(3) On or before October 1st, all commodity boards or commissions are required to report to the department the dollar value of the assessments collected during the board's or commission's previous fiscal year. The board or commission's contribution shall be based on the previous fiscal year's annual assessment ((~~level~~)). For commissions with the authority to suspend assessments, the contribution shall be based on the most recently collected annual assessment prior to suspension.

(((~~(3) On or around July 1st of each fiscal year~~)) (4) During the month of October, the department will bill each commodity board or commission for its portion of the total financial contribution. The board or commission shall remit to the department the amount billed within ((~~thirty~~)) ninety days of the billing date.

(((~~(4)~~)) (5) The department will provide each commodity board or commission with an annual report regarding the department's activities on behalf of the boards or commissions.

AMENDATORY SECTION (Amending WSR 02-16-045, filed 8/1/02, effective 9/1/02)

WAC 16-501-015 Calculation of a commodity board or commission's contribution. The ((~~total~~)) financial contribution for each commodity board or commission shall be calculated using the following steps:

(1)(a) Step 1 - Using the dollar value that a board or ((~~commission's~~)) commission receives from its annual assessment ((~~level~~)), the base ((~~assessment~~)) contribution portion of a commodity board or commission's share of the total financial contribution is established as follows:

Contribution Categories

Assessment Level	Base ((~~Assessment~~)) Contribution
((~~>~~)) ≤ $100,000	$250.00
100,001 - 250,000	500.00
250,001 - 500,000	750.00
500,001 - 1,000,000	1,000.00
1,000,001 - 5,000,000	2,000.00
5,000,001 - 10,000,000	3,000.00
10,000,001 and above	4,000.00

(b) A percentage is calculated for each board or commission by dividing the board or commission's base ((~~assessment~~)) contribution by the total base ((~~assessment~~)) contribution for all boards and commissions.

((~~For example, assuming commission A's base assessment is $4,000 divided by an assumed total base assessment of $80,000 results in 5% (.05)~~)))

(2)(a) Step 2 - The difference between the total financial contribution and the total base ((~~assessment~~)) contribution is apportioned to each board or commission using the percentage calculated in ((~~subsection (1)~~)) step 1.

(b) The amount calculated in step 2 is subject to a $7,500 cap on any one board or commission((~~;~~

~~For example, assuming a total financial contribution of $105,000 minus the assumed total base assessment of $80,000 results in a difference of $25,000. $25,000 multiplied by commission A's .05 equals $1,250. This is commission A's portion of the difference~~)).

(3) Step 3 - If any board or commission reaches the $7,500 cap in step 2, the difference between the amount calculated for that board or commission in subsection (2)(a) of this section and $7,500 would be ((~~recalculated~~)) apportioned among the remaining boards or commissions ((~~or boards~~)) using a percentage of each board's or commission's base ((~~assessment~~)) contribution to the total base ((~~assessment~~)) contribution less the base ((~~assessment~~)) contribution of the board or commission that reached the cap.

((~~For example, assume that commission A's percentage remains 5% but that the difference between the total financial contribution and the total base assessment is $180,000. $180,000 multiplied by .05 equals $9,000. $9,000 exceeds the $7,500 cap for commission A by $1,500. This $1,500 would be apportioned between the other boards and commissions excluding commission A.~~

~~For example, assume that commission B's base assessment is $3,000. The total base assessment excluding commission A is now $76,000 ($80,000 less commission A's $4,000). Commission B's base assessment of $3,000 divided by $76,000 results in .04 rounded (4%). $1,500 (the excess over the cap~~

~~for commission A) multiplied by .04 equals $60, which is commission B's share of the excess.~~))

(4) Step 4 - A commodity ((~~commission or board's~~)) board or commission's contribution is the sum of ((~~the~~)) its base ((~~assessment~~)) contribution from ((~~subsection (1)~~)) step 1 and the calculations in ((~~subsections (2) or (3) whichever is applicable.~~

~~For example, using the calculations in subsection (2), commission A's contribution is $5,250 ($4,000 base assessment plus $1,250 apportioned share).~~

~~Using the calculations in subsection (3), commission A's contribution is $11,500 ($4,000 base assessment plus the $7,500 cap).~~)) steps 2 and 3.

(5) The following example is a hypothetical scenario used to illustrate how the formula is applied:

(a) Commission A reports an annual assessment of $200,000, therefore its base contribution is $500.

(b) Assuming the total base contribution for all boards and commissions is $23,750, a percentage is calculated for commission A by dividing its base contribution of $500 by the total base contribution of $23,750, which is 2.11 percent.

(c) Assuming a total financial contribution of $100,000, the difference between the total financial contribution ($100,000) and the total base contribution ($23,750) is $76,250. This amount ($76,250) is apportioned to each commission using the percentage calculated in step 1. For commission A, $76,250 multiplied by 2.11 percent is rounded to $1,605, which is commission A's initial portion of the total financial contribution.

(d) Next, commission A's base assessment ($500) is added to its portion calculated in step 2 ($1,605), which equals $2,105.

(e) If any board or commission hits the $7,500 cap provided for in step 2, the difference between the amount calculated and $7,500 is apportioned among the other boards and commissions not reaching the cap.

(f) For example, commission B has a base contribution of $3,000 and exceeds the $7,500 cap by $2,132. That $2,132 would be apportioned on a percentage basis among the other boards and commissions, excluding commission B.

(g) To find the number in (f) of this subsection for commission A, take the number calculated for commission A in step 2 ($1,605) and divide it by the total step 2 calculations for all boards and commissions, excluding commission B. Assuming the total for all boards and commissions, excluding commission B, is $66,621, the number for commission A is 2.41. Multiply that by the total amount in step 2, including commission B, which equals $51 for commission A.

(h) The total amount owed by commission A is the base assessment in step 1 ($500), plus the amount in step 2 ($1,605), plus the amount in step 3 ($51) for a total contribution of $2,156.

(i) The total amount owed by commission B is the base assessment in step 1 ($3,000), plus the amount in step 2 ($7,500) for a total of $10,500.

WSR 19-22-063
PROPOSED RULES
RECREATION AND CONSERVATION OFFICE

[Filed November 5, 2019, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-078.

Title of Rule and Other Identifying Information: Amending Title 420 WAC, adding a new chapter 420-08 WAC, Local and regional organization rules; adding new WAC 420-04-065 Duties of the governor's salmon recovery office; and amending WAC 420-04-010 Definitions.

Hearing Location(s): On December 12, 2019, at 9:50 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98501.

Date of Intended Adoption: December 12, 2019.

Submit Written Comments to: Katie Pruit, 1111 Washington Street S.E., Olympia, WA 98504-0917, email katie.pruit@rco.wa.gov, by December 9, 2019.

Assistance for Persons with Disabilities: Contact Leslie Frank, phone 360-902-0220, email leslie.frank@rco.wa.gov, 711 relay service, by December 10, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to clarify the local process framework intended by the Salmon Recovery Act (chapter 77.85 RCW). These are technical amendments not anticipated to affect the existing process. New sections are added to capture the roles and responsibilities of lead entities, regional recovery organizations, and the governor's salmon recovery office. There are also two new definitions, as well as two definition changes to provide technical clarity.

Reasons Supporting Proposal: Salmon recovery in Washington state includes a multitude of partners working together from the bottom up to recover listed salmon populations. In 1998, the Salmon Recovery Act established the local process which led to a complex framework that is not easily communicated or understood by new or external partners. The recommended rule changes will formalize the foundational work that has been in place since 1998, thereby clarifying the process for the future.

Statutory Authority for Adoption: RCW 77.85.120 (1)(d) and chapter 34.05 RCW.

Statute Being Implemented: Chapter 77.85 RCW, Salmon Recovery Act.

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

Name of Proponent: Washington state recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pruit, 1111 Washington Street S.E., Olympia, WA, 360-725-5452; Implementation and Enforcement: Kaleen Cottingham, 1111 Washington Street S.E., Olympia, WA, 360-902-3000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The recreation and conservation office is not

listed as an agency to complete a cost-benefit analysis under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

November 5, 2019
Katie Pruit
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-07-085, filed 3/17/16, effective 4/17/16)

WAC 420-04-010 Definitions. For purposes of Title 420 WAC, the definitions in RCW 77.85.010 apply. In addition, unless the context clearly indicates otherwise, the following definitions also apply:

"Acquisition project" means a project that purchases or receives a donation of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access or trail easements, covenants, water rights, leases, and mineral rights.

"Agreement" or "project agreement" means the accord accepted by the office and the sponsor for the project and includes any attachments, addendums, and amendments, and any intergovernmental agreements or other documents that are incorporated into the project agreement subject to any limitations on their effect.

"Applicant" means any party that meets qualifying standards as described in RCW 77.85.010(6), including deadlines, for submission of an application soliciting a grant of funds from the board.

"Application" means the documents and other materials that an applicant submits to the office to support the applicant's request for grant funds.

"Board" means the salmon recovery funding board as described in RCW 77.85.110.

"Capacity funding" is a grant to lead entities and regional organizations as described in RCW 77.85.130(4) to assist in carrying out functions to implement chapter 77.85 RCW.

"Chair" means the chair of the board described in RCW 77.85.110.

"Citizens committee" means a committee established by a lead entity that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests as described in RCW 77.85.050.

"Director" means the director of the office or that person's designee, as described in RCW 79A.25.150.

"Enhancement project" or "hatchery and harvest enhancement project" means a project that supports hatchery reform to improve hatchery effectiveness to minimize impacts to wild fish populations, ensure compatibility between hatchery production and salmon recovery programs, or support sustainable fisheries.

"Habitat project list" means the list of projects as described in RCW 77.85.010(3) compiled by a citizens' committee and submitted by a lead entity to the board as described in RCW 77.85.050(3). The habitat project list shall establish priorities for individual projects and define the sequence for project implementation as described in RCW 77.85.050. The list of projects in the habitat project list must be within the lead entity area as described in RCW 77.85.050 (2). The habitat project list includes the lead entity ranked project list.

"Initiating governments" means the counties, cities, and tribal governments that choose to participate in the formation of a lead entity area.

"Lead entity" means a city, county, conservation district, special purposes district, tribal government, regional recovery organization or other entity that is designated jointly by any one or more of the counties, cities, and Native American tribes within the lead entity area as described in RCW 77.85.050.

"Lead entity area" means the geographic area designated jointly by any one or more of the counties, cities, and Native American tribes within that area, which is based, at a minimum, on a watershed resource inventory area, as described in RCW 77.85.010(13), combination of water resource inventory areas, or any other area as described in RCW 77.85.050 (2) that does not overlap with another lead entity area for the same salmon species.

"Lead entity ranked project list((~~," also known as the "habitat work schedule,~~))" means those projects on the habitat project list that will be implemented in the current funding cycle per RCW 77.85.010(4) and as described in RCW 77.85.060.

"Manual(s)" means a compilation of state and federal laws; board rules, policies and procedures; and director procedures, forms, and instructions assembled in manual form for dissemination to parties that participate in the board's or office's grant program(s).

"Match" or "matching share" means the portion of the total project cost in the project agreement provided by the project sponsor.

"Monitoring or research project" means a project that monitors the effectiveness of salmon recovery restoration actions, or provides data on salmon populations or their habitat conditions.

"Noninitiating governments" means the counties, cities, and tribal governments that decline to participate in the selection of a lead entity area. Any government that declines to participate in the formation of a lead entity area, with or without formal notification, is a noninitiating government. Noninitiating governments may participate in other functions of the lead entity.

"Office" means the recreation and conservation office as described in RCW 79A.25.010.

"Planning project" means a project that results in a study, assessment, project design, or inventory.

"Preagreement cost" means a project cost incurred before the period of performance identified in the project agreement.

"Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the office on behalf of the board.

"Project area" means the area consistent with the geographic limits of the scope of work of the project. For restoration projects, the project area must include the physical limits of the project's final site plans or final design plans. For acquisition projects, the project area must include the area described by the legal description of the properties acquired in the project.

"Regional recovery organization" or "regional salmon recovery organization" means an organization described in RCW 77.85.010(7).

"Reimbursement" means the payment of funds from the office to the sponsor for eligible and allowable project costs that have already been paid by the sponsor per the terms of an agreement.

"Restoration project" means to bring a site back to its historic function as part of a natural ecosystem or improving or enhancing the ecological functionality of a site.

"Salmon recovery region" means a geographic area as described in RCW 77.85.010(10).

"Sponsor" means an eligible applicant under RCW 77.85.010(6) who has been awarded a grant of funds and is bound by an executed project agreement; includes its officers, employees, agents, and successors.

NEW SECTION

WAC 420-04-065 Duties of the governor's salmon recovery office. The purpose and duties of the governor's salmon recovery office are described in RCW 77.85.030. Among other duties, the governor's salmon recovery office must maintain and revise a statewide salmon recovery strategy as described in RCW 77.85.150.

Chapter 420-08 WAC

LOCAL AND REGIONAL ORGANIZATION RULES

NEW SECTION

WAC 420-08-010 Forming a lead entity. (1) All counties, cities, and tribal governments within a lead entity area must have an opportunity to determine whether they wish to initiate the formation of a lead entity area and the selection of a lead entity.

(2) Initiating governments must jointly designate, by resolution or letters of support, a lead entity area and select an entity or organization to act as a lead entity through an adopted resolution or letter of support as described in RCW 77.85.050.

(3) If a lead entity and lead entity area already exists and the initiating governments agree that the lead entity should be changed to another organization, they must do so by following subsections (1) and (2) of this section.

(4) If a noninitiating government decides to participate in the lead entity after it has been acknowledged by the office, they must adopt a resolution or letter of support and provide it to the office. Noninitiating governments may participate in other salmon recovery activities described in this title.

NEW SECTION

WAC 420-08-020 Duties of a lead entity and citizens committee. (1) A lead entity administers a local process to identify salmon habitat restoration and acquisition projects and activities that support salmon recovery efforts critical to implementing salmon recovery plans. To accomplish this purpose, a lead entity must hire a coordinator to:

(a) Facilitate the work of a citizens committee;

(b) Work closely with a regional salmon recovery organization, if within a recognized region, to develop a local strategy to restore salmon habitat that meets the needs identified in a salmon recovery plan; and

(c) Recruit organizations to implement salmon habitat restoration projects and activities identified in a local strategy.

(2) A lead entity must establish a citizens committee as described in RCW 77.85.050. A lead entity, or its fiscal agent, shall not designate itself as the citizens committee. A lead entity shall not make decisions on behalf of the citizens committee. The citizen committee must be comprised of people within the lead entity area that represent initiating governments, businesses, interest groups, and private citizens interested in salmon recovery. The citizen committee may include noninitiating governments.

(3) A lead entity must adopt a conflict of interest policy consistent with state guidance that applies to the lead entity and the citizens committee and other committees convened by the lead entity.

(4) The main purpose of a citizens committee is to develop a habitat project list as described in RCW 77.85.050, including a lead entity ranked list, that:

(a) Is based on the critical pathways methodology as described in RCW 77.85.060;

(b) Gives a preference for funding projects in areas that contain salmon species listed or proposed for listing under the federal Endangered Species Act as described in RCW 77.85.050 or supports tribal treaty fishing rights;

(c) Defines a sequence for project implementation and establishes priorities for individual projects as described in RCW 77.85.050 Habitat project lists; and

(d) Identifies federal, state, local, or private funding sources for individual projects as described in RCW 77.85.-050.

(5) A lead entity must submit a habitat project list compiled by a citizens committee, including a lead entity ranked project list, to the board by the deadline established by the board and described in RCW 77.85.140. A lead entity must not reorder or substantively alter the habitat project list compiled by a citizens committee without citizens committee's approval.

(6) A citizens committee or lead entity may designate a local technical advisory group as described in RCW 77.85.-060. The main purpose of a local technical advisory group is to:

(a) Assist in evaluating the technical merits of individual projects to ensure projects are scientifically valid;

(b) Assist with implementing the critical pathways methodology, including limiting factors analyses;

(c) Advise on prioritizing projects; and

(d) Provide consultation to project sponsors and landowners on how to implement projects.

NEW SECTION

WAC 420-08-030 Duties of a regional recovery organization. (1) The main purpose of a regional recovery organization is to coordinate salmon recovery planning and implementation. A regional recovery organization works directly with the federal government to develop, implement, and monitor a regional salmon recovery plan. A regional recovery organization also works directly with the lead entities within the salmon recovery region to develop and implement the recovery plan.

(2) A regional organization may be selected as a lead entity per WAC 420-08-010 Forming a lead entity.

(3) Lead entities within a salmon recovery region may request the governor's salmon recovery office to recognize them as a regional salmon recovery organization as described in RCW 77.85.090 except for those lead entities within the areas covered by the Lower Columbia fish recovery board and Puget Sound leadership council.

(4) A regional organization must submit all federally recognized salmon recovery plans and amendments to the governor's salmon recovery office for incorporation into the statewide salmon recovery strategy.

(5) A regional organization shall advise the board on whether a project on a habitat project list submitted by a lead entity is a priority in the regional salmon recovery plan or strategy. The board will consider the regional organizations advice before it makes a decision on whether to fund a project.

NEW SECTION

WAC 420-08-040 Capacity funding. (1) The board may award capacity grants to regional salmon recovery organizations as described in RCW 77.85.030 and 77.85.090 and lead entities as described under RCW 77.85.130 for administrative support to implement salmon recovery activities. The governor's salmon recovery office shall administer capacity grants through an executed agreement as described in RCW 77.85.050.

(2) The office will execute an agreement for a capacity grant to a lead entity after the initiating governments select a lead entity area and a lead entity. If the office has an existing agreement for a capacity grant and a lack of consensus on a lead entity area or a lead entity develops, the office may suspend, terminate, or fail to renew the agreement with that lead entity until the initiating governments agree.

WSR 19-22-065
PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD
[Filed November 5, 2019, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-081.

Title of Rule and Other Identifying Information: Creating chapter 136-500 WAC, Emergency loan program (ELP).

Hearing Location(s): On January 30, 2020, at 2:00 p.m., at 2404 Chandler Court S.W.

Date of Intended Adoption: January 30, 2020.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, email karen@crab.wa.gov, by January 24, 2020.

Assistance for Persons with Disabilities: Contact Karen Pendleton, phone 360-753-5989, TTY 800-833-6384, email karen@crab.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The goal of this new program is to provide financial assistance to counties during a disaster.

Reasons Supporting Proposal: The goal of this new program is to provide financial assistance to counties during a disaster.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989; and Enforcement: John Koster, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989.

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

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

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 5, 2019
John M. Koster
Executive Director

Chapter 136-500 WAC

EMERGENCY LOAN PROGRAM (ELP)

NEW SECTION

WAC 136-500-010 Purpose and authority. RCW 36.78.070 provides that the county road administration board shall administer the emergency revolving loan program established by chapter 36.78 RCW. This chapter describes the manner in which the county road administration board will administer the provisions of the emergency revolving loan program.

NEW SECTION

WAC 136-500-020 Definitions. For this chapter, the following definitions shall apply:

(1) Board - County road administration board as defined in chapter 36.78 RCW.

(2) CRAB - County road administration board.

(3) DDIR - Detailed damage inspection report used by the Federal Highway Administration as an application for emergency funding under their programs.

(4) LGIP - Local government investment pool under the administration of the state treasurer.

(5) Permanent - Work that restores or improves a county road for the long-term use by the traveling public.

(6) Temporary - Work that restores a county road for the short-term use by the traveling public. Temporary work typically results in restricted use and signing of deficiencies for the safety of the traveling public.

NEW SECTION

WAC 136-500-030 Eligible work. Eligible work under this chapter is work of either a temporary or a permanent nature. Permanent work must restore the roadway to the predisaster condition and may include necessary improvements to bring the damaged roadway to current design standards. This work must be the result of a natural or man-made event that results in the closure or substantial restriction of use of the roadway by the traveling public. Work of an emergency nature is beyond the scope of work done by a county in repairing damage normally or reasonably expected from seasonal or other natural conditions.

This program may fund eligible work on any classification of road under the county's jurisdiction.

NEW SECTION

WAC 136-500-040 County eligibility. Any county who is eligible to participate in the rural arterial program, has a current certificate of good practice and a total population under 800,000 as of April 1, 2019, is eligible to participate in this program.

NEW SECTION

WAC 136-500-050 Project type and submittal. (1) There are two project types eligible for funding under this program:

(a) Site specific - Single location.

(b) County wide - Multiple sites within a single county.

(2) To request a loan through this program, the county shall submit the following:

(a) A copy of the adopted emergency declaration; and

(b) A brief description of the project site(s) requested for funding; and

(c) An estimate of costs for work at each site(s); and

(d) Pictures of the damaged area(s); or

(e) A DDIR for each site may be submitted in lieu of requirements (a) through (d) of this subsection.

NEW SECTION

WAC 136-500-060 Funding limits. Project funding is limited to two million dollars or fifty percent of available fund balance, whichever value is less. If a county desires funding above these limits, the county's legislative authority may request additional funding at the next regularly scheduled board meeting.

NEW SECTION

WAC 136-500-070 Prioritization. If CRAB receives multiple loan requests resulting from a single regional event, funding shall be prioritized. Prioritization will be made by averaging the county rankings for the following criteria:

(1) RCW 46.68.124(2) - Annual road costs. Counties ranked from lowest road cost factor to highest.

(2) RCW 46.68.124(3) - Money needs. Counties ranked from lowest money needs factor to highest.

The lower the average county ranking, the higher priority that county is for funding during a regional event.

NEW SECTION

WAC 136-500-080 Payback terms. Any loan funded through this program shall have a term not to exceed twenty-four months. The county will be invoiced six months from the date of contract execution and quarterly thereafter until the end of the contract term.

Interest on the amount of the loan shall be the monthly rate of return for the LGIP not to exceed three percent.

If a county pays the county road administration board the principle amount of the loan within six months of the date of contract execution, no interest will be charged and the contract will be closed. Should a county not pay the loan in full within six months of the date of contract execution, interest will be calculated from the date of contract execution to the date of final payment. A county may pay off any loan received through this program before the end of the term to reduce the amount of interest owed.

NEW SECTION

WAC 136-500-090 Execution of CRAB/county contract. The executive director of CRAB is authorized to execute a contract with any eligible county under this program with a not to exceed amount of two million dollars or fifty percent of available fund balance, whichever value is less. A county may request additional funding through this program at the next regularly scheduled board meeting.

Upon execution of a contract under this chapter, the executive director will advise board members of the contract details including county, number of project(s) and the loan amount.

NEW SECTION

WAC 136-500-100 Failure to meet requirements of this chapter or terms of the contract. Should a county fail to meet the requirements of this chapter or the terms of the contract, the matter will be before the board at their next reg-

ularly scheduled meeting. The county will be requested to be present for said meeting to provide an explanation for failing to meet the requirements of this chapter or terms of the contract. At said meeting, the board may take any action it deems necessary to ensure prompt compliance of the requirements of this chapter and the terms of the contract.

NEW SECTION

WAC 136-500-110 Report to legislature. Consistent with RCW 43.01.036, the board must submit a report to the legislature by December 1st of each even-numbered year identifying each project that received money from the CRAB emergency loan account, the amount of the loan, the expected repayment terms of the loan, the expected date of repayment, and the loan repayment status. Each project should be reported about until the loan is repaid.

WSR 19-22-066
PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD
[Filed November 5, 2019, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-082.

Title of Rule and Other Identifying Information: Amendments to chapter 136-163 WAC, Allocation of RATA funds to projects.

Hearing Location(s): On January 30, 2020, at 2:00 p.m., at 2404 Chandler Court S.W.

Date of Intended Adoption: January 30, 2020.

Submit Written Comments to: Karen Pendleton, 2404 Chandler Court S.W., Suite 240, email karen@crab.wa.gov, by January 24, 2020.

Assistance for Persons with Disabilities: Contact Karen Pendleton, phone 360-753-5989, TTY 800-833-6384, email karen@crab.wa.gov, by January 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed amendment to chapter 136-164 WAC will eliminate the definition of "emergency project:" from the rural arterial program. Emergency projects will be address[ed] in new chapter 136-500 WAC, Emergency loan program (ELP).

Reasons Supporting Proposal: This proposed amendment to chapter 136-164 WAC will eliminate the definition of "emergency project:" from the rural arterial program. Emergency projects will be address[ed] in new chapter 136-500 WAC, Emergency loan program (ELP).

Statutory Authority for Adoption: Chapter 36.78 RCW.

Statute Being Implemented: Not applicable.

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

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989; and Enforcement: John Koster, 2404 Chandler Court S.W., Suite 240, Olympia, 98504, 360-753-5989.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under chapter 36.78 RCW.

November 5, 2019
John M. Koster
Executive Director

Chapter 136-163 WAC

ALLOCATION OF RATA FUNDS TO EMERGENT ((~~AND EMERGENCY~~)) PROJECTS

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-163-010 Purpose and authority. RCW 36.79.140 provides for the authorization of ((~~RATA~~)) rural arterial trust account funds for projects of an emergent nature. This chapter describes the manner in which counties may request ((~~RATA funds~~)) funding for such emergent projects and the manner in which the county road administration board will respond to such requests.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-163-020 ((~~Definitions.~~)) Project eligibility. ((~~For the purposes of this chapter, the term "emergent nature" as used in RCW 36.79.140 shall mean both "emergent" and "emergency" projects as follows:~~

~~(1) **Emergency project:** Work of either a temporary or permanent nature which restores roads and bridges to the pre-disaster condition and may include reconstruction to current design standards. This work is the result of a sudden natural or man-made event which results in the destruction or severe damage to RATA-eligible roadway sections or structures such that, in the consideration of public safety and use, the roadway sections or structures must be immediately closed or substantially restricted to normal traffic. Work of an emergency nature is also beyond the scope of work done by a county in repairing damages normally or reasonably expected from seasonal or other natural conditions, and is beyond what would be considered maintenance, regardless of how extensive the maintenance may be.~~

~~(2) **Emergent project:** RATA-eligible work necessitated by sudden and unanticipated development, growth, access needs, or legal decisions. This work is not the result of an emergency situation as previously defined. This work, in~~

~~consideration of good transportation capital facilities management, will also require a county to commit resources beyond its current six-year transportation program and prior to the next six-year transportation program annual update as provided for in RCW 36.81.121.~~)) Projects of an emergent nature may be funded through the rural arterial program as authorized by chapter 36.79 RCW. An emergent project is defined as a project whose need the county was unable to anticipate at the time the six-year program of the county was developed. Emergency work to temporarily restore a county road for the short-term use of the traveling public is not eligible for funding as an emergent project; however, a project to permanently repair a county road after an emergency may be considered for funding if the proposed project meets all other requirements of the rural arterial program.

To be eligible for emergent project approval, the project shall be evaluated by the county road administration board grant programs engineer, with the participation of the county engineer, on the same point system as all other projects within the region. The proposed emergent project must rank at or above the regional funding cutoff line on the current array based upon one hundred percent of the current estimated regional allocation as determined by the county road administration board.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

WAC 136-163-050 Limitations and conditions((~~—Emergency and emergent projects~~)). All projects for which ((~~RATA~~)) rural arterial program funding is being requested under this chapter are subject to the following:

(1) The requesting county has the sole burden of making a clear and conclusive showing that the project is ((~~either~~)) emergent ((~~or emergency~~)) as described in ((~~WAC 136-163-020 through 136-163-040~~)) this chapter; and

(2) The requesting county shall clearly demonstrate that the need for the project was unable to be anticipated at the time the current six-year transportation program was developed; and

(3) The requesting county agrees to a reduction in the next funding period's maximum RATA eligibility to the county equal to the RATA that may be provided; however, should that region not have a maximum RATA eligibility for each county, the requesting county agrees to withdraw, amend or delay an existing approved project or portion thereof in an amount equal to the RATA that may be provided for the project.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 136-163-030	Limitations and conditions—Emergency projects.
WAC 136-163-040	Limitations and conditions—Emergent projects.

WSR 19-22-067
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 5, 2019, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-108.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-483-0005 Do I qualify for food assistance if I have a substantial lottery or gambling win? and to amend WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food?, 388-418-0005 How will I know what changes to report?, and 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period?

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than December 11, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 10, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 26, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is necessary to implement federal changes to the Supplemental Nutrition Assistance Program (SNAP) prohibiting individuals with substantial lottery and gambling winnings from receiving SNAP benefits. This change is required by Section 4009 of the Agricultural Act of 2014, implemented by United States Department of Agriculture (USDA) Food and Nutrition Services final rule, published on April 15, 2019, adopting provisions in 7 C.F.R. 273.11(r).

Reasons Supporting Proposal: The proposed rules ensure SNAP (basic food) program administration aligns with federal statute and regulations.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.250; 7 C.F.R. 273; 84 F.R. 15083.

Rule is necessary because of federal law, 7 C.F.R. 273.11(r).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ivette Dones-Figueroa, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4651.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under

RCW 34.05.328 (5)(b)(iii) which states in-part, "This section does not apply to … rules adopting or incorporating by reference without material change federal statues or regulations, Washington state statues …."

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.11(r) Disqualification for Substantial Lottery or Gambling Winnings. Consequences of not adopting these rules include federal audit findings leading to potential loss of federal program funding.

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: Relating to client financial eligibility.

October 31, 2019
Katherine I. Vasquez
Rules Coordinator

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

WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food? (1) **What is "categorically eligible" (CE)?**

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet **every** program requirement to be eligible for basic food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for basic food:

(i) Countable resource limit under WAC 388-470-0005;

(ii) Maximum gross monthly income under WAC 388-478-0060; and

(iii) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for basic food:

(i) Social Security number information under WAC 388-476-0005;

(ii) Sponsored alien information under WAC 388-450-0155; and

(iii) Residency under WAC 388-468-0005.

(d) Being CE does not mean that your AU is guaranteed to get basic food benefits. If your AU is CE:

(i) You must still meet the other basic food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) **Who is categorically eligible for basic food?** Your basic food AU is CE when your household meets the conditions in subsection (2)(a) or (b) below:

(a) Your AU's income that we do not exclude under WAC 388-450-0015 is at or under two hundred percent of the federal poverty guidelines we use for department programs.

(i) The federal government publishes the federal poverty guidelines on the health and human services web site. These are currently posted at http://aspe.hhs.gov/poverty/index.shtml.

(ii) The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

(iii) If your income is not over two hundred percent of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.

(b) Everyone in your AU receives one of the following cash assistance programs:

(i) Temporary assistance for needy families (TANF)/state family assistance (SFA) or tribal TANF under WAC 388-400-0005 and WAC 388-400-0010;

(ii) Aged, blind, or disabled (ABD) cash assistance under WAC 388-400-0060;

(iii) Supplemental security income (SSI) under Title XVI of the Social Security Act; or

(iv) Diversion cash assistance (DCA) under WAC 388-432-0005. DCA makes the basic food AU CE for the month it receives DCA and the following three months.

(3) **Who is not CE even if my AU meets the above criteria?**

(a) Even if your AU is CE, members of your AU are not eligible for basic food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from basic food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for basic food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for basic food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU lost eligibility due to substantial lottery or gambling winnings as indicated under WAC 388-483-0005;

(ii) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

((~~(ii)~~)) (iii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;

((~~(iii)~~)) (iv) Your AU refused to cooperate in providing information that is needed to determine your eligibility;

((~~(iv)~~)) (v) The head of household for your AU failed to meet work requirements; or

((~~(v)~~)) (vi) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

AMENDATORY SECTION (Amending WSR 19-01-105, filed 12/18/18, effective 2/1/19)

WAC 388-418-0005 How will I know what changes to report? (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

(a) If you receive **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than six thousand dollars; or

(v) You have a change in employment, you need to tell us if:

(A) You get a job or change employers;

(B) Your schedule changes from part-time to full-time or full-time to part-time;

(C) You have a change in your hourly wage rate or salary; or

(D) You stop working.

(b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) Anyone related to the child you are caring for moves into or out of the home;

(iv) There is a change in the recipient child's earned or unearned income unless they are in school full-time as described in WAC 388-450-0070;

(v) The recipient child has liquid resources more than six thousand dollars;

(vi) A recipient child in the home becomes a foster child; or

(vii) You legally adopt the recipient child.

(2) If you do not receive cash assistance but you do receive benefits from basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, and tell us if:

(a) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; ((~~or~~))

(b) You or a member of your household receives substantial lottery or gambling winnings in a single game that is equal to or over the elderly or disabled resource limit under WAC 388-470-0005 (8)(a); or

(c) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

Chapter 388-483 WAC

SUBSTANTIAL LOTTERY OR GAMBLING WINNINGS

NEW SECTION

WAC 388-483-0005 Do I qualify for food assistance if I have a substantial lottery or gambling win? (1) Any household certified to receive food assistance will lose eligibility upon receipt of a substantial lottery or gambling win by any household member.

(2) A substantial lottery or gambling win is a cash prize that is:

(a) Equal to or over the elderly or disabled resource limit for food assistance, before taxes or other withholdings, under WAC 388-470-0005 (8)(a); and

(b) Won in a single game as result of a single hand, bet, or ticket.

(3) If multiple individuals shared in the purchase of the ticket, hand, or similar bet, then we count only the portion of the winnings allocated to members of your household.

(4) You must report a substantial lottery or gambling win for food assistance as required under chapter 388-418 WAC.

(5) The loss of eligibility in subsection (1) of this section begins the first of the month following our termination letter under WAC 388-458-0030.

(6) If your AU lost eligibility due to a substantial win, your AU:

(a) Will not be CE under WAC 388-414-0001 when reapplying for food assistance; and

(b) Is not eligible for transitional food assistance (TFA) under WAC 388-489-0025.

(7) An AU that loses eligibility for food assistance due to a substantial win will remain ineligible until meeting the following criteria as part of a new food assistance application eligibility determination:

(a) The countable resource limit under WAC 388-470-0005;

(b) Maximum gross monthly income under WAC 388-478-0060; and

(c) Maximum net monthly income under WAC 388-478-0060.

(8) If you regain eligibility for food assistance, your AU may become CE upon certification of the new basic food application if you meet CE criteria under WAC 388-414-0001.

AMENDATORY SECTION (Amending WSR 12-18-024, filed 8/27/12, effective 9/27/12)

WAC 388-489-0025 Can my transitional food assistance benefits end before the end of my five-month transition period? Your transitional food assistance benefits will end early if:

(1) Someone who gets transitional food assistance with you applies and is approved for temporary assistance for needy families while still living in your home. You may reapply to have your eligibility for basic food determined;

(2) We learn that you and your household are no longer residing in the state of Washington; or

(3) **All members** of your household are ineligible to get basic food for any of the following reasons:

(a) Refusal to cooperate with quality assurance (WAC 388-464-0001);

(b) Substantial lottery or gambling win (WAC 388-483-0005);

(c) Transfer of property to qualify for basic food assistance (WAC 388-488-0010);

(((c))) (d) Intentional program violation (WAC 388-446-0015 and 388-446-0020);

(((d))) (e) Fleeing felon or violating a condition of probation or parole (WAC 388-442-0010);

(((e))) (f) Alien status (WAC 388-424-0020 and 388-424-0030);

(((f))) (g) Employment and training requirements (WAC 388-444-0055 and 388-444-0075);

(((g))) (h) Work requirements for able-bodied adults without dependents (WAC 388-444-0030);

(((h))) (i) Student status (WAC 388-482-0005);

(((i))) (j) Living in an institution where residents are not eligible for basic food (WAC 388-408-0040); or

(((j))) (k) Deceased.

WSR 19-22-073
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed November 5, 2019, 2:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-091.

Title of Rule and Other Identifying Information: The state board of education (SBE) has reviewed chapter 180-18 WAC, Waivers for restructuring purposes, to make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, or make other changes identified during the review.

Hearing Location(s): On December 13, 2019, at 2:00 - 2:30 p.m., at the Brouillet Room, Fourth Floor, Old Capitol, 600 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: January 16, 2020.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by December 13, 2020 [2019].

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-725-6047, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by December 13, 2020 [2019].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SBE has reviewed chapter 180-18 WAC to make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

The proposed rules make the following changes to:

- Streamline the one hundred eighty day waiver application process in WAC 180-51-040 to simplify analysis. Remove application requirements that have proven not to be helpful in the approval process and present an additional burden on applicants. Add a requirement for districts to summarize how equity was considered in their proposed plan.
- Remove language in WAC 180-18-050 that would require an application process for parent-teacher conference waivers for up to five days, thus reducing administrative burden for districts or the state.
- Remove requirement in WAC 180-18-055 that SBE notify the state board of community and technical colleges, the Washington student achievement council, and the Council of Presidents every time it passes a waiver from credit-based graduation requirements. The schools receiving the waiver are listed on the SBE website and awareness of these waivers within the higher education system is such that these notifications are no longer necessary.
- Allow the office of superintendent of public instruction greater discretion in approving of waivers for the purposes of economy and efficiency in WAC 180-18-065 when districts are competing for the allowable number of slots by considering "other relevant information." Remove the order of criteria for the consideration of approval and broaden approval criteria. Add a requirement for districts to summarize how equity was considered in their proposed plan.

Reasons Supporting Proposal: SBE has reviewed chapter 180-18 WAC. The proposed rules make changes as necessary to align rule to current policy or practice, correct references to law, implement recently passed legislation, improve readability of the rule, or make other changes identified during the review of the WAC chapter.

Statutory Authority for Adoption: RCW 28A.150.220, 28A.300.750.

Statute Being Implemented: RCW 28A.150.220, 28A.300.750.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

A school district fiscal impact statement has been prepared RCW 28A.305.135.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR:	Title of Rule: Waiver Restructuring Rules	Agency: SDF - School District Fiscal Impact - SPI

Part I: Estimates: No fiscal impact.

Estimated Cash Receipts to: No estimated cash receipts.

Estimated Expenditures from: No estimated expenditures.

Estimated Capital Impact: No estimated capital impact.

Agency Preparation: T. J. Kelly, phone 360-725-6301, September 30, 2019.

Part II: Narrative Explanation:

II. A - Brief Description Of What the Measure Does That Has Fiscal Impact: *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

None.

II. B - Cash Receipts Impact: *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

None.

II. C - Expenditures: *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

None.

Part III: Expenditure Detail:

III. A - Expenditures by Object or Purpose: None.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Mr. Thomas Kelly, 600 Washington Street S.E., Olympia, WA 98504, phone 360-725-6301, fax 360-586-2357, TTY 360-664-3631, email Thomas.Kelly@k12.wa.us.

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

November 5, 2019
Randy Spaulding
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-056, filed 8/28/02, effective 9/28/02)

WAC 180-18-010 Purpose and authority. (1) The purpose of this chapter is to support local educational improvement efforts by establishing policies and procedures by which schools and school districts may request waivers from basic education program approval requirements.

(2) The authority for this chapter is RCW ((~~28A.305.140~~)) 28A.300.750 and 28A.655.180(1).

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-18-030 Waiver from total instructional hour requirements. A district desiring to improve student achievement by enhancing the educational program for all students may apply to the superintendent of public instruction for a waiver from the total instructional hour requirements. The superintendent of public instruction may grant said waiver requests that demonstrate the waiver is necessary to support improving student achievement pursuant to RCW ((~~28A.305.140~~)) 28A.300.750 and WAC 180-18-050 for up to three school years.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement. (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the superintendent of public instruction for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((~~28A.305.140~~)) 28A.300.750 and WAC 180-16-215 while offering the equivalent in annual minimum instructional hours as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The superintendent of public instruction may grant said waiver requests for up to three school years.

(2) The superintendent of public instruction, pursuant to RCW ((~~28A.305.140(2)~~)) 28A.300.750, shall evaluate the need for a waiver based on whether:

(a) The resolution by the board of directors of the requesting district attests that if the waiver is approved, the district will meet the required annual instructional hour offerings under RCW 28A.150.220(2) in each of the school years for which the waiver is requested;

(b) The purpose and goals of the district's waiver plan are closely aligned with school improvement plans under WAC 180-16-220 and any district improvement plan;

(c) The plan explains goals of the waiver related to student achievement that are specific, measurable, and attainable;

(d) The plan states clear and specific activities to be undertaken that are based in evidence and likely to lead to attainment of the stated goals;

(e) The plan specifies at least one state or locally determined assessment or metric that will be used to collect evidence to show the degree to which the goals were attained;

(f) The plan describes in detail the participation of administrators, teachers, other district staff, parents, and the community in the development of the plan;

(g) The plan summarizes how the district considered equity in the development of the plan. This may include, but is not limited to, an equity analysis, community feedback, or other means to assess the consequences of the waiver.

(3) In addition to the requirements of subsection (2) of this section, the superintendent of public instruction shall evaluate requests for a waiver that would represent the continuation of an existing waiver for additional years based on the following:

(a) ((~~The degree to which the prior waiver plan's goals were met, based on the assessments or metrics specified in the prior plan;~~

~~(b)~~)) The effectiveness of the implemented activities in achieving the goals of the plan for student achievement;

(b) Explanation of how the effectiveness of the plan is measured;

(c) Any proposed changes in the plan to achieve the stated goals;

(d) ((~~The likelihood that approval of the request would result in advancement of the goals;~~

~~(c)~~)) Support by administrators, teachers, other district staff, parents, and the community for continuation of the waiver.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-18-050 Procedure to obtain waiver. (1) Superintendent of public instruction approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 shall occur prior to implementation. A district's waiver application shall include, at a minimum, a resolution adopted by the district board of directors, an application form, a proposed school calendar, and a summary of the collective bargaining agreement with the local education association stating the number of professional development days, full instruction days, late-start and early-release days, and the amount of other noninstruction time. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution must include a statement attesting that the district will meet the minimum instructional hours requirement of RCW 28A.150.-220(2) under the waiver plan. The resolution shall be accompanied by information detailed in the guidelines and application form available on the office of superintendent of public instruction's website.

(2)(a) The application for a waiver and all supporting documentation must be received by the superintendent of public instruction based on a schedule issued by the superintendent of public instruction and prior to implementation of the waiver days. The superintendent of public instruction shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek superintendent of public instruction approval upon resubmittal.

(b) Based on a schedule issued by the superintendent of public instruction, the superintendent of public instruction will, on a determination that the required information and documentation has been submitted, notify the requesting district that the requirements of this section have been met and a waiver has been granted.

(3) Under this section, a district seeking to obtain a waiver of no more than five days from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((~~28A.305.140~~)) 28A.300.750 solely for the purpose of conducting parent-teacher conferences shall provide notification ((~~of the district request~~)) to the superintendent of public instruction at least thirty days prior to implementation of the plan. A request for more than five days must be presented to the superintendent of public instruction under subsection (1) of this section for approval. The notice shall provide information and documentation as directed by the superintendent of public instruction. The information and documentation shall include, at a minimum:

(a) An adopted resolution by the school district board of directors which shall state, at a minimum, the number of school days and school years for which the waiver is requested, and attest that the district will meet the minimum instructional hours requirement of RCW 28A.150.220(2) under the waiver plan; and

(b) ((~~A detailed explanation of how the parent-teacher conferences to be conducted under the waiver plan will be used to improve student achievement;~~

~~(c) The district's reasons for electing to conduct parent-teacher conferences through full days rather than partial days;~~

~~(d)~~)) The number of partial days that will be reduced as a result of implementing the waiver plan((~~;~~

~~(e) A description of participation by administrators, teachers, other staff and parents in the development of the waiver request;~~

~~(f) An electronic link to the collective bargaining agreement with the local education association.~~

~~Based on a schedule issued by the superintendent of public instruction, the superintendent of public instruction will, on a determination that the required information and documentation have been submitted, notify the requesting district that the requirements of this section have been met and a waiver has been granted~~)).

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-18-055 Alternative high school graduation requirements. (1) The shift from a time and credit based system of education to a standards and performance based education system will be a multiyear transition. In order to facilitate the transition and encourage local innovation, the state board of education finds that current credit-based graduation requirements may be a limitation upon the ability of high schools and districts to make the transition with the least amount of difficulty. Therefore, the state board will provide districts and high schools the opportunity to create and implement alternative graduation requirements.

(2) A school district, or high school with permission of the district board of directors, or approved private high school, desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for high school students, may apply to the state board of education for a waiver from one or more of the requirements of chapter 180-51 WAC.

(3) The state board of education may grant the waiver for a period up to four school years.

(4) The waiver application shall be in the form of a resolution adopted by the district or private school board of directors which includes a request for the waiver and a plan for restructuring the educational program of one or more high schools which consists of at least the following information:

(a) Identification of the requirements of chapter 180-51 WAC to be waived;

(b) Specific standards for increased student learning that the district or school expects to achieve;

(c) How the district or school plans to achieve the higher standards, including timelines for implementation;

(d) How the district or school plans to determine if the higher standards are met;

(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan;

(f) Evidence that students, families, parents, and citizens were involved in developing the plan; and

(g) Identification of the school years subject to the waiver.

(5) The plan for restructuring the educational program of one or more high schools may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (4)(a) through (d) of this section.

(6) The application also shall include documentation that the school is successful as demonstrated by indicators such as, but not limited to, the following:

(a) The school has clear expectations for student learning;

(b) The graduation rate of the high school for the last three school years;

(c) Any follow-up employment data for the high school's graduate for the last three years;

(d) The college admission rate of the school's graduates the last three school years;

(e) Use of student portfolios to document student learning;

(f) Student scores on the high school Washington assessments of student learning;

(g) The level and types of family and parent involvement at the school;

(h) The school's annual performance report the last three school years; ((~~and~~))

(i) The level of student, family, parent, and public satisfaction and confidence in the school as reflected in any survey done by the school within the last three school years;

(j) The plan summarizes how the district considered equity in the development of the plan. This may include, but is not limited to, an equity analysis, community feedback, or other means to assess the consequences of the waiver.

(7) A waiver of WAC 180-51-060 may be granted only if the district or school provides documentation and rationale that any noncredit based graduation requirements that will replace in whole or in part WAC 180-51-060, will support the state's performance-based education system being implemented pursuant to RCW 28A.630.885, and the noncredit based requirements meet the minimum college core admissions standards as accepted by the higher education coordinating board for students planning to attend a baccalaureate institution.

(8) A waiver granted under this section may be renewed upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational requirements that were implemented as a result of the waiver. The request to the state board shall include information regarding the activities and programs implemented as a result of the waiver, whether higher standards for students are being achieved, assurances that students in advanced placement or other postsecondary options programs, such as but not limited to: College in the high school, running start, and tech-prep, shall not be disadvantaged, and a summary of the comments received at the public meeting or meetings.

(9) ((~~The state board of education shall notify the state board for community and technical colleges, the Washington student achievement council and the council of presidents of any waiver granted under this section.~~

~~(10)~~)) Any waiver requested under this section will be granted with the understanding that the state board of education will affirm that students who graduate under alternative graduation requirements have in fact completed state requirements for high school graduation in a nontraditional program.

(((~~(11)~~))) (10) Any school or district granted a waiver under this chapter shall report annually to the state board of education, in a form and manner to be determined by the board, on the progress and effects of implementing the waiver.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-18-065 Waiver from one hundred eighty-day school year requirement for purposes of economy and efficiency—Criteria for evaluation of waiver requests. (1) In order to be granted a waiver by the superintendent of public instruction under RCW 28A.305.141 to operate one or more schools on a flexible calendar for purposes of economy and efficiency, a school district eligible for such waiver must meet each of the requirements of RCW 28A.305.141(2).

(2) In the event that a greater number of requests for waivers are received that meet the requirement of subsection (1) of this section than may be granted by the superintendent of public instruction under RCW 28A.305.141(3), if the superintendent of public instruction determines that the applying districts are otherwise eligible, their applications will be prioritized ((~~in the following order~~)) based on the following criteria:

(a) Districts that are already operating on a flexible calendar under this waiver program; ((~~and~~))

(b) Those plans that best redirect monetary savings from the proposed flexible calendar to support student learning;

(c) The plan summarizes how the district considered equity in the development of the plan. This may include, but is not limited to, an equity analysis, community feedback, or other means to assess the consequences of the waiver; and

(d) Other relevant information that may include financial savings, academic indicators, quality of application, community support, and alignment to the district's strategic plan.

AMENDATORY SECTION (Amending WSR 18-23-012, filed 11/8/18, effective 12/9/18)

WAC 180-18-100 District waiver from requirement for student access to career and technical education course equivalencies. (1) Any school district reporting, in any school year, an October P223 headcount of fewer than two thousand students as of January of that school year may apply to the superintendent of public instruction for a waiver of up to two years from the provisions of RCW 28A.230.010 (2) for the subsequent school year.

(2) In any application for a waiver under this section, the district shall demonstrate that students enrolled in the district do not have and cannot be provided reasonable access, through high schools, interdistrict cooperatives, skill centers or branch or satellite skill centers, or through online learning or applicable running start vocational courses, to ((~~at least one career and technical education course that is considered equivalent to a mathematics course or at least one career and technical education course that is considered equivalent to a science course as determined by the superintendent of public instruction~~)) grant academic course equivalency for at least one statewide equivalency high school career and technical education course from the list of courses approved by the superintendent of public instruction under RCW 28A.700.-070.

(3) On a determination((~~, in consultation with the office of the superintendent of public instruction,~~)) that the students enrolled in the district do not and cannot be provided reasonable access to at least one career and technical education course that is considered ((~~equivalent to a mathematics course or at least one career and technical education course that is considered equivalent to a science course~~)) to grant academic course equivalency for at least one statewide equivalency high school career and technical education course under subsection (2) of this section, the superintendent of public instruction shall grant the waiver for the term of years requested.

(4) The office of superintendent of public instruction shall post on its website an application form for use by a district in applying for a waiver under this section. A completed application must be signed by the chair or president of the district's board of directors and superintendent.

(5) In order to provide sufficient notice to students, parents, and staff, the application must be submitted to the superintendent of public instruction in electronic form no later than ((~~January 15th of the school year prior to the school year for which the waiver is requested~~)) the deadline established by the office of superintendent of public instruction. The office of superintendent of public instruction shall post a list of all approved applications ((~~received~~)) on its public website.

WSR 19-22-074
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed November 5, 2019, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-050.

Title of Rule and Other Identifying Information: The proposed rules amend chapter 194-37 WAC, Energy Independence Act, and create a new section in new chapter 194-40 WAC, Clean Energy Transformation Act.

Hearing Location(s): On December 16, 2019, at 10:00 a.m., at the Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501.

Date of Intended Adoption: December 18, 2019.

Submit Written Comments to: Austin Scharff, Washington Department of Commerce, P.O. Box 42525, Olympia, WA 98504, email ceta@commerce.wa.gov, by December 16, 2019.

Assistance for Persons with Disabilities: Contact Austin Scharff, phone 360-764-9632, email austin.scharff@commerce.wa.gov, by December 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 194-37 WAC, the proposed rules incorporate legislative changes to RCW 19.285.030 and 19.285.040. These changes improve accountability of renewable energy claims by adopting an industry-standard definition of a renewable energy credit and expand the eligibility to hydropower to include federal projects marketed by the Bonneville Power Administration. Chapter 194-40 WAC, the proposed new rules establish a new chapter for rules related to the Clean Energy Transformation Act (chapter 19.405 RCW) and utility planning laws (chapter 19.280 RCW). The new rule sections establish the purpose and scope of the chapter and establish specific cost values for consumer-owned utilities to use when incorporating the social cost of greenhouse gas emissions into planning, evaluation, and resource acquisition.

Reasons Supporting Proposal: The proposed rules implement statutory changes, improve resource decisions by requiring consideration of damages caused by greenhouse gas pollution, and maintain consistent approaches to cost evaluation between consumer-owned utilities and investor-owned utilities.

Statutory Authority for Adoption: RCW 19.405.010, 19.285.080.

Statute Being Implemented: RCW 19.285.030, 19.285.040, 19.280.030, chapter 19.405 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Rule-making activity will continue under WSR 19-14-050 as the agency develops rules to implement the Clean Energy Transformation Act.

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Glenn Blackmon, Ph.D., 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-339-5619; Imple-

mentation: Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General of Washington, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-725-6200.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department of commerce.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose any additional cost on any person. Electric utilities have greater flexibility by meeting renewable energy targets under the Energy Independence Act and have greater certainty concerning the cost values to be used in resource planning and evaluation.

November 5, 2019
S. Coggins
Legislative Coordinator

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

WAC 194-37-040 Definitions. The definitions in chapter 19.285 RCW apply throughout this chapter.

(1) "Annual revenue requirement" and "total annual revenue requirement" mean that portion of a utility's annual budget approved by its governing body for the target year that is intended to be recovered through retail electricity sales in the state of Washington in the target year, or as otherwise documented by the utility pursuant to WAC 194-37-150.

(2) "Biennial target" means a utility's biennial conservation target.

(3) "BPA" means the Bonneville Power Administration.

(4) "Measurement protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty the amount of energy savings that will result from the installation of a conservation measure. Industry standards include a range of appropriate protocols reflecting a balancing of cost and accuracy, such as the application of a deemed savings value established through industry processes for a measure that has broad application and uniform characteristics and the use of engineering calculations, metering, utility billing analysis, and computer simulation for a measure installed as part of a customer-specific project.

(5) "Multifuel generating facility" means a generating facility that is capable of producing energy from more than one nonrenewable fuel, renewable fuel, or nonfuel energy source, either simultaneously or as alternatives, provided that at least one fuel source (energy source) is a renewable resource and the relative quantities of electricity production can be measured or calculated, and verified.

(6) "NWPCC" means Pacific Northwest Electric Power and Conservation Planning Council also known as the Northwest Power and Conservation Council. Its calculation of avoided costs and publications are available at www.nwcouncil.org.

(7) "REC" means renewable energy credit.

(8) "Regional technical forum" or "RTF" means a voluntary advisory committee that reports to the executive director of the NWPCC and whose members are appointed by the NWPCC's chair.

(9) "Renewable energy target" means the amount, in megawatt-hours or RECs, necessary for a utility to satisfy the requirements of RCW 19.285.040 (2)(a) in a specific target year.

(10) "Substitute resource" means reasonably available electricity or generating facilities, of the same contract length or facility life as the eligible renewable resource the utility invested in to comply with chapter 19.285 RCW requirements, that otherwise would have been used to serve a utility's retail load in the absence of chapter 19.285 RCW requirements to serve that retail load with eligible renewable resources.

(11) "Target year" means a specific year in which a utility must comply with the renewable energy requirements of chapter 19.285 RCW.

(12) "Ten-year potential" means the ten-year cost effective conservation resource potential.

(13) "Utility" means a consumer-owned electric utility, as the term consumer-owned utility is defined in RCW 19.29A.010, that is a qualifying utility.

(14) "Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

(15) "Vintage" means the year in which electricity is generated.

(16) "Weather-adjusted load" means load calculated after variations in peak and average temperatures from year to year are taken into account.

((~~(16)~~)) (17) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is an independent, renewable energy registry and tracking system for the region covered by the Western Interconnection. WREGIS creates renewable energy certificates, WREGIS certificates, for verifiable renewable generation from units that register in the registry and tracking system.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

WAC 194-37-120 Documentation of use of eligible renewable resources and RECs for compliance. A utility using an eligible renewable resource or REC for compliance with a requirement of chapter 19.285 RCW must document that use by following the procedures in this section.

(1) **Documentation of energy from eligible renewable resources.** Each utility using an eligible renewable resource for compliance must document the following for each resource:

(a) The electricity was generated by a generating facility that is an eligible renewable resource;

(b) The electricity was generated during the target year;

(c) If the utility sold, exchanged, or otherwise transferred the electricity to any person other than its retail customer, the utility retained ownership of the nonpower attributes; and

(d) The utility retired, consistent with the requirements of subsection (2) of this section, any RECs representing the nonpower attributes associated with the electricity or, if no RECs have been created, the utility has committed to use the nonpower attributes exclusively for the compliance purpose stated in its documentation.

(2) **Documentation of renewable energy certificates.** Each utility using a REC for compliance must document the following:

(a) The REC represents the output of an eligible renewable resource;

(b) For a REC from electricity generated by a resource other than freshwater, the vintage of the REC is the year immediately prior to the target year, the year of the target year, or the year immediately after the target year; and

(c) For a REC from electricity generated by freshwater:

(i) The vintage of the REC is the target year;

(ii) The REC was acquired by the utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity; and

(iii) For RECs from projects marketed by the Bonneville Power Administration, the utility received the REC through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of the electricity.

(d) The utility has ((~~removed the REC from circulation by transferring~~)) retired the REC to a retirement subaccount of the utility within WREGIS using the following values in the certificate transfer:

(i) Retirement type: Used by the account holder for a state-regulated renewable portfolio standard/provincial utility portfolio standard;

(ii) State/province: Washington; and

(iii) Compliance year: Applicable target year.

AMENDATORY SECTION (Amending WSR 15-07-002, filed 3/6/15, effective 4/6/15)

WAC 194-37-130 Documentation of incremental hydropower. (1) **Projects owned by qualifying utilities.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285.030 (12)(b), to meet a renewable energy target must provide documentation that:

(a) The hydroelectric generation project is owned by a qualifying utility and is located in the Pacific Northwest;

(b) The hydropower efficiency improvement was completed after March 31, 1999; and

(c) The additional generation does not result in new water diversions or impoundments.

(2) **Federal projects.** Each utility using electricity produced as a result of a hydropower efficiency improvement, as defined in RCW 19.285.030 (12)(g), to meet a renewable energy target must provide documentation that:

(a) The output of the hydroelectric generation project is marketed by the Bonneville Power Administration;

(b) The utility received the electricity through a transaction with the Bonneville Power Administration that conveyed both the electricity and the nonpower attributes of that electricity;

(c) The hydropower efficiency improvement was completed after March 31, 1999; and

(d) The additional generation does not result in new water diversions or impoundments.

(3) If the amount of electricity generated as a result of the hydropower efficiency improvement is directly measurable, the utility must use the measured output of the hydropower efficiency improvement as documentation of the amount of additional generation.

(((~~(3)~~))) (4)(a) If the amount of electricity generated as a result of the hydropower efficiency improvements is not directly measurable, the utility must document the amount of electricity generated as a result of the hydropower efficiency improvement using an engineering analysis comparing the output in megawatt-hours of the hydroelectric generation project with the efficiency improvement to the output in megawatt-hours of the hydroelectric generation project without the efficiency improvement. Multiple efficiency improvements to a single hydroelectric generation project may be combined for purposes of the engineering analysis.

(b) The engineering analysis required by (a) of this subsection must be performed using an engineering model of the hydroelectric generation project that quantifies the relationship of stream flows, reservoir elevation, and other relevant factors to the electric output of the generating facility. The engineering model must accurately reflect the physical characteristics and operating requirements of the hydroelectric generation project during the target year and must accurately estimate the electric generation of the hydroelectric generation project without and with the hydropower efficiency improvement.

(c) A utility using the engineering analysis method to determine incremental generation must adopt and consistently apply in each target year one of the following methods:

(i) **Method one - Actual incremental generation.** A utility using this method must prepare an analysis using actual stream flows and the engineering model described in (b) of this subsection during each target year to determine incremental generation in the target year. A utility using this method must perform an updated calculation each year to determine the incremental generation amount for that target year.

(ii) **Method two - Percentage generation.**

(A) A utility using method two must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors, during a historical study period.

(B) The historical study period used in method two must be reasonably representative of the stream flows that would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of

this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least five years in length.

(C) The amount of incremental generation using method two is calculated by multiplying the actual generation in megawatt-hours in the target year by a percentage amount equal to the difference between the calculated average generation over the historical study period with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydropower efficiency improvement, divided by the calculated average generation over the historical study period without the hydropower efficiency improvement.

(iii) **Method three - Fixed amount of generation.**

(A) A utility using method three must prepare an analysis establishing the expected amount of incremental generation based on stream flows available to the hydroelectric generation project, adjusted for any known and measurable changes to stream flows due to environmental regulations or other factors during a historical study period.

(B) The historical study period used in method three must be reasonably representative of the stream flows that would have been available to the hydroelectric project over the period of time for which stream flow records are readily available. A historical study period meets the requirements of this subsection if it includes the most recent readily available stream flow records and consists of a consecutive record of stream flow records at least ten years in length.

(C) The amount of incremental generation using method three is calculated as an amount in megawatt-hours equal to the difference between the calculated average generation over the historical study period with the hydropower efficiency improvement and the calculated average generation over the historical study period without the hydropower efficiency improvement. The amount must be adjusted in each target year for any reduction in availability of the hydroelectric generation project's generating capacity during the target year that is not accounted for in the analysis used to calculate the incremental generation amount.

((~~(4)~~)) (5) The requirements of this section are in addition to the documentation requirements specified in WAC 194-37-120(1).

Chapter 194-40 WAC

CLEAN ENERGY TRANSFORMATION ACT

NEW SECTION

WAC 194-40-010 Purpose and scope. The purpose of this chapter is to implement the requirements of chapter 19.405 RCW, Clean Energy Transformation Act, and chapter 19.280 RCW.

NEW SECTION

WAC 194-40-020 Applicability. Unless specifically provided otherwise, the provisions of this chapter apply to consumer-owned electric utilities that provide electrical service to retail customers in the state of Washington.

NEW SECTION

WAC 194-40-100 Social cost of greenhouse gas emissions. (1) The social cost of greenhouse gas emissions to be included by utilities in resource planning, evaluation, and selection, in compliance with RCW 19.280.030(3), is equal to the cost per metric ton of carbon dioxide equivalent emissions, using the 2.5 percent discount rate, listed in table 2, technical support document: Technical update of the social cost of carbon for regulatory impact analysis under Executive Order No. 12866, published by the interagency working group on social cost of greenhouse gases of the United States government, August 2016, referred to in this rule as the "technical support document."

(2) The social cost values for intermediate years are calculated by linear interpolation and provided in Appendix A of the technical support document. Social cost values for years after 2050 must be determined by applying an escalation factor of 1.3 percent, consistent with Table 3 of the technical support document. Social cost values must be adjusted for inflation, using the implicit price deflator for gross domestic product published by the United States Department of Commerce, from the 2007 dollars to the base year used for other cost and benefit values in the utility's analysis.

(3) As a convenience and illustration, the cost values established in subsection (1) of this section and adjusted as provided for in subsection (2) of this section for inflation to 2018 dollars are restated here:

Year in Which Emissions Occur or Are Avoided	Social Cost of Carbon Dioxide (in 2007 dollars per metric ton)	Social Cost of Carbon Dioxide (in 2018 dollars per metric ton)
2010	$50	$60
2015	$56	$67
2020	$62	$74
2025	$68	$81
2030	$73	$87
2035	$78	$93
2040	$84	$100
2045	$89	$106
2050	$95	$113

(4) The social cost values established in this rule are minimum values. A utility may apply a greater value if it has a reasonable basis to do so.

WSR 19-22-077
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed November 5, 2019, 3:02 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations, the department of health (department) is proposing adopting a new rule to establish

fees necessary for the department to receive and process an attestation that a tribal behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency.

Hearing Location(s): On December 10, 2019, at 11:30 a.m., at the Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: January 1, 2020.

Submit Written Comments to: Stephanie Vaughn, P.O. Box 47850, Olympia, WA 98504-7850, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Stephanie Vaughn, phone 360-236-4617, fax 360-236-2901, TTY 360-833-6388 or 711, email stephanie.vaughn@doh.wa.gov, by December 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department was a participant this year in a formal tribal consultation regarding how tribes attest that a tribal behavioral health agency meets state minimum standards for licensure and certification as a behavioral health agency. The proposed rule establishes a fee for the department to process tribal attestations.

In order to comply with the requirements of RCW 43.70.250, the department must "set [the] fee[s] for each program at a sufficient level to defray the costs of administering that program …." It is therefore necessary for the department to establish this fee in order to support the administrative work involved in receiving and recording these tribal attestations. The department is required to set in rule all fees associated with licensing according to RCW 43.70.250 (2) and (3). This administrative fee was agreed upon as part of the tribal consultation.

This rule only applies to tribes attesting that a tribal behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency.

Reasons Supporting Proposal: Section 1004 of E2SSB 5432 changed the definition of "licensed or certified behavioral health agency" in RCW 71.24.025 to include "an entity with a tribal attestation that it meets state minimum standards for a licensed or certified behavioral health agency."

The department participated in two consultations and workgroups with the American Indian Health Commission and tribes to discuss the attestation process, including the fee. This proposed rule-making action puts into rule the decisions made at the consultation regarding the fee.

Statutory Authority for Adoption: RCW 43.70.250, 43.70.280, and 71.24.037.

Statute Being Implemented: RCW 71.24.025 as amended by E2SSB 5432 (chapter 325, Laws of 2019).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Vaughn, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4617; Implementation and Enforcement: Robert McLellan, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4604.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

November 5, 2019
John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-341-0367 Agency licensure and certification—Fee requirements for tribal attestations. (1) A tribe may attest that its behavioral health agency meets state minimum standards for a licensed or certified behavioral health agency, as described by the definition of "licensed or certified behavioral health agency" in RCW 71.24.025 (26)(c).

(2) A tribe that is pursuing attestation with the department must submit a two hundred sixty-one dollar administrative processing fee to the department for any new or renewed attestation.

WSR 19-22-078
PROPOSED RULES
DEPARTMENT OF NATURAL RESOURCES

[Filed November 5, 2019, 11:09 p.m.]

Supplemental Notice to WSR 19-17-004.

Preproposal statement of inquiry was filed as WSR 19-13-055.

Title of Rule and Other Identifying Information: Chapter 332-120 WAC, Memorandum of understanding for chip seal surface treatment and clarification of existing requirements, proposed rule went through public hearing and comments to add new WAC 332-120-080 for chip seal projects, and is being revised to also include clarifications to WAC 332-120-020 and 332-120-060.

Hearing Location(s): On December 20, 2019, at 1:30 p.m., at the Department of Natural Resources (DNR) Tumwater Compound, 801 88th Avenue S.E., Main Conference Room, Tumwater, WA 98501-7019.

Date of Intended Adoption: January 17, 2020.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1778, 360-902-1181, by December 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Creation of a memorandum of understanding (MOU) process for agencies conducting chip seal projects that will allow a reasonable and cost-effective way for agencies to be in compliance with RCW 58.24.040(8). Adds the requirement to comply with the applicable sections of the Survey Recording Act, chapter 58.09 RCW.

Reasons Supporting Proposal: Chip seal projects temporarily cover survey monuments but do not physically remove them. A chip seal project has limited impact on accessibility to occupy survey monument positions. The MOU process will provide a cost savings to both the agencies and DNR.

Statutory Authority for Adoption: RCW 58.24.040(8).

Statute Being Implemented: RCW 58.24.040(8).

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

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-7030, 360-902-1181; Implementation: Bob R. Knuth, PLS, DNR Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1190; and Enforcement: Ken Fuller, PE, Board of Registration PE and PLS, 406 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1570.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost savings is anticipated due to the MOUs setting up reporting systems and not requiring monument removal permits.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 5, 2019
Angus W. Brodie
Deputy Supervisor State Uplands

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

WAC 332-120-020 Definitions. The following definitions shall apply to this chapter:

Covering: The physical covering of a survey monument such that the physical structure is no longer visible or readily accessible.

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09.-090.

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Removal or destruction: The physical disturbance ((~~or covering~~)) of a monument such that the ((~~survey point is~~)) physical structure no longer ((~~visible or readily accessible~~)) exists.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

WAC 332-120-060 Project completion—Perpetuation of the original position. (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.-120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor or engineer shall complete the report form required by this chapter and forward it to the department.

(4) ((~~Additionally, after remonumenting any corner originally monumented by the GLO or BLM, a land corner record form shall also be filed with the county auditor as required by the Survey Recording Act.~~)) A record of survey or land corner record shall be completed as required by the Survey Recording Act to document the remonumentation in the public record.

NEW SECTION

WAC 332-120-080 Survey monument preservation MOU for chip seal projects. The purpose of this section is to cooperatively promote a reasonable method of land survey monument preservation throughout a chip seal project in lieu of requiring an application for permit to remove or destroy a survey monument, per WAC 332-120-030.

(1) It is the responsibility of the licensed engineer in responsible charge of any chip seal project which may cover survey monuments to ensure that a licensed surveyor is tasked with:

(a) Searching survey monument records and locating survey monuments within the project limits; and

(b) Establishing Washington plane coordinate system values on all found monuments.

(2) A state, county, or municipal agency conducting annual chip seal projects that cover survey monuments in the roadway may enter into an MOU with DNR which shall include the following requirements:

(a) Notification sent to the department annually by April 1st of planned projects (road name and milepost) with start date and expected completion;

(b) An accurate listing of all found survey monuments to be temporarily covered, and the coordinates of their position;

(c) The responsibility of the agency to ensure that all survey monuments within the project area are located and protected;

(d) All monuments shall be uncovered and made useable by November 1st after completion of annual chip seal activities; and

(e) The professional engineer in responsible charge of a chip seal project shall submit an annual report to the department by December 31st certifying that the affected monuments were uncovered by November 1st.

(3) An agency which does not enter into an MOU under this section is required to submit a permit application per WAC 332-120-030 for any activity that will cover a survey monument.

WSR 19-22-081

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 6, 2019, 8:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-041.

Title of Rule and Other Identifying Information: WAC 192-170-010 Availability for work—RCW 50.20.010, setting requirements for when claimants are eligible for unemployment benefits while physically located outside of the United States.

Hearing Location(s): On December 12, 2019, at 9 a.m., at the Employment Security Department, 212 Maple Park Avenue, Commissioner's Conference Room, Olympia, WA 98501

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by December 11, 2019.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@esd.wa.gov, by December 5, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amended rule sets requirements for when claimants are eligible for unemployment benefits while physically located outside of the United States by amending WAC 192-170-010.

Reasons Supporting Proposal: The commissioner issued a precedential decision (*In re McConnell,* Empl. Sec. Comm'r Dec.2d 1005 (2016)) that holds that claimants can still be eligible for unemployment benefits even when they are physically located outside of the United States. Rule making is needed to set clear standards for when claimants are or are not eligible for unemployment benefits while physically located in another country.

Amending rules regarding eligibility for benefits when physically located outside of the United States will provide benefits for certain claimants and expand options for claimants to look for opportunities to return to work in industries with trans global footprints. This supports the department's mission to develop the nation's best and most future ready workforce with opportunities for all.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.12.042 and 50.20.010 provide specific rule-making authority regarding the requirement that unemployment claimants register for work, be able to work, be available for work, and actively seek work.

Statute Being Implemented: RCW 50.20.010.

Rule is necessary because of state court decision, *In re McConnell,* Empl. Sec. Comm'r Dec.2d 1005 (2016).

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, 360-890-9579.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, https://esd.wa.gov/newsroom/ui-rule-making/.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The following analysis assumes that all previous unemployment claims that were denied because the claimant was out of the country would instead be allowed. In reality, the proposed rule does not state that all persons who file unemployment claims from outside of the country are automatically eligible for unemployment benefits, and it is likely that at least some of the previous claims that were denied before would still be denied under the proposed rule. Therefore, the following analysis presents a "worst-case scenario" and likely overstates the potential economic impacts of the proposed rule.

From January 2017 through August 2019, there were one hundred three claims denied for being out of the country. With the proposed rule, the potential benefits paid during this time period would include an average weekly benefit amount of $531 over twenty-six weeks. This average weekly benefit amount represents $13,806 in additional charged benefits per claim.

When considering the total claims spread across the statewide employer base, the proposed rule would have a negligible impact on total costs. The charged benefits from the one hundred three claims would increase each employers' average charged benefits by $2.99 per year. An increase of this size is not likely to increase the tax liability for any employer.

November 6, 2019
Dan Zeitlin
Employment Security
Policy Director

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to work full-time, part-time, and accept temporary work during all of the usual hours and days of the week customary for your occupation.

(i) You are not required to be available for part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be available for full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(3) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States; or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

WSR 19-22-082
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-069 and 19-17-064.

Title of Rule and Other Identifying Information: WAC 260-28-200 Trainer—Paddock duties and 260-40-110 Horse must be in the care of and saddled by a licensed trainer.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends language to allow trainers to use employees or other licensed personnel in saddling.

Reasons Supporting Proposal: Trainers that may be physically unable to saddle would be able to designate an employee or other that may be able to saddle and the trainer would be present to supervise.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 17-05-059, filed 2/10/17, effective 3/13/17)

WAC 260-28-200 Trainer—Paddock duties. (1) A trainer must have his or her horse in the receiving barn or paddock at the time appointed.

(2) A trainer, their assistant trainer, or substitute trainer, must attend his or her horse in the paddock, and must be present to ((~~saddle~~)) conduct, or directly supervise, the saddling of the horse((~~, unless he/she has obtained the permission of a steward to send another licensed trainer as a substitute~~)).

(a) If a trainer or assistant trainer directly supervises the saddling of the horse, only licensees that have demonstrated the skills required and have been approved by a commission appointed designee may physically saddle the horse. The trainer will be required to pay a L&I premium if the licensee which performs the duties is not a registered employee of the trainer or the owner of the horse.

(b) An owner may be approved to saddle, but may only saddle horses in which they have an ownership interest.

(3) In all claiming races, protective wraps and boots must be removed immediately after the horse has been saddled for the race.

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

WAC 260-40-110 Horse must be in care of and saddled by a licensed trainer. (1) No person may start a horse in a race unless the horse is under the care of a trainer licensed at the race meet.

(2) No horse may start in a race unless the licensed trainer, or an approved substitute as provided in WAC 260-28-200, saddles the horse. The stewards may approve a substitute trainer who may saddle the horse in an emergency situation.

WSR 19-22-083
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-022.

Title of Rule and Other Identifying Information: WAC 260-70-685 Alphabetical listing of all drugs, medications, and foreign substances.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates classification of substances and adds new substances as classified by the Model Rules of Racing.

Reasons Supporting Proposal: Several new substances have been classified and numerous current substances have been reclassified since the last amendment to this section.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 17-07-055, filed 3/10/17, effective 4/10/17)

WAC 260-70-685 Alphabetical listing of all drugs, medications, and foreign substances. This section contains an alphabetical listing of all drugs, medications and foreign substances classified in WAC 260-70-680.

Drug	Trade Name	Class	Penalty Class
Δ-1-androstene-3, 17-diol		3	A
Δ-1-androstene-3, 17-dione		3	A
Δ-1-dihydrotestosterone		3	A
1-androstenediol (5a-androst-1-ene-3β, 17β-diol)		3	B
1-androstenedione (5a-androst-1-ene-3, 17-dione)		3	B
1-testosterone (17β-hydroxy-5a-androst-1-en-3-one)		3	A
19-Norandrostenediol		3	B
19-Norandrostenedione		3	B

Drug	Trade Name	Class	Penalty Class
19-Noretiocholanolone		3	B
2-Aminoheptane	Tuamine	4	B
3,4-methylenedioxypyprovalerone	MDPV, "bath salts"	1	A
3-Methoxytyramine	3-MT	2	A
4-androstene-3, 6, 17-trione (6-oxo)		3	B
4-androstenediol (androst-4-ene-3β, 17β-diol)		3	B
4-Hydroxytestosterone		3	B
5-androstenedione (androst-5-ene-3, 17-dione)		3	B
5α-androstane-3α, 17α-diol		3	B
5α-androstane-3α, 17β-diol		3	B
5α-androstane-3β, 17α-diol		3	B
5α-androstane-3β, 17β-diol		3	B
5β-androstane-3α-17β-diol, androst-4-ene-3α, 17α-diol		3	B
7-keto-dhea; 19-		3	B
7α-hydroxy-dhea		3	B
7β-hydroxy-dhea		3	B
a-Cobratoxin		1	A
Acebutolol	Sectral	3	((~~A~~)) B
Acecarbromal		2	A
Acenocoumarol		5	((~~B~~)) C
((~~*~~))Acepromazine	Atrovet, Notensil, PromAce©	3	B
Acetaminophen (((~~Phenacetin~~)) Paracetamol)	Tylenol, Tempra, etc.	4	C
Acetanilid		4	B
Acetazolamide	Diamox, Vetamos	4	C
Acetophenazine	Tindal	2	A
Acetophenetidin (Phenacetin)		4	B
Acetylsalicylic acid (Aspirin)		4	C
((~~Aclomethasone~~	~~Aclovate~~	~~4~~	~~C~~))
Activators of the AMP-activated protein kinase (AMPK) - E.g., AICAR and Peroxisome Proliferator Activated Receptor δ (pparδ) agonist (e.g., GW 1516)	AICAR	2	A
Adinazolam		2	A
Adrenochrome ((~~monoremicarbazone~~)) monosemicarbazone salicylate		4	B
((~~*~~))Albuterol (Salbutamol)	Proventil Ventolin	3	B
Alclofenac		2	B
Alclometasone	Aclovate	4	C
Alcuronium	Alloferin	2	A
Aldosterone	Aldocortin, Electrocortin	4	B
Alfentanil	Alfenta	1	A
Almotriptan	Axert	3	A
Alphaprodine	Nisentil	2	A

Drug	Trade Name	Class	Penalty Class
Alpidem	Anaxyl	2	A
Alprazolam	Xanax	2	A
Alprenolol		2	A
Althesin	Saffan	2	A
Altrenogest	Regumate	4	C/Gelding, Colts, Intact Males only
Ambenonium	Mytelase, Myeuran	3	B
Ambroxol	Ambril, etc.	4	B
Amcinonide	Cyclocort	4	C
Amiloride	Moduretic; Midamor	4	B
Aminocaproic acid	Amicar, Caprocid	4	C
((~~Aminodarone~~		~~4~~	~~B~~))
Aminoglutethimide		3	B
Aminophylline	Aminophyllin, etc.	3	B
Aminopyrine		4	B
Aminorex	Aminoxafen, Aminoxaphen, Apiquel, McN-742, Menocil	1	A
Amiodarone		4	B
Amisometradine	Rolictron	4	B
Amisulpride	Solian	2	A
Amitraz	Mitaban	3	B
Amitriptyline	Elavil, Amitril, Endep	2	A
((~~Amlopidine~~)) Amlodipine	Norvasc, Ammivin	3	B
Amobarbital	Amytal	2	A
Amoxapine	Asendin	2	A
Amperozide		2	A
Amphetamine		1	A
Amrinone		4	B
Amyl nitrite		2	A
Anastrozole		3	B
Androst-4-ene-3α, 17β-diol		3	B
Androst-4-ene-3β, 17α-diol		3	B
Androst-5-ene-3α, 17α-diol		3	B
Androst-5-ene-3α, 17β-diol		3	B
Androst-5-ene-3β, 17α-diol		3	B
Androsta-1, 4, 6-triene-3, 17-dione (androsta-trienedione)		3	B
Androstenediol (androst-5-ene-3β, 17β-diol)		3	B
Androstenedione (androst-4-ene-3, 17-dione)		3	B
Androsterone (3β-hydroxy-5α-androstan-17-one)		3	B
Anileridine	Leritine	1	A
Anilopam	Anisine	2	A
Anisindione		5	D

Drug	Trade Name	Class	Penalty Class
Anisotropine	Valpin	4	B
Antipyrine		4	B
Apazone (Azapropazone)	Rheumox	4	B
Apomorphine		1	A
Aprindine		4	B
Aprobarbital	Alurate	2	A
ARA-290		1	A
Arecoline		3	A
Arformoterol		3	B
Articaine	Septocaine; Ultracaine, etc.	2	((~~A~~)) B
Asialo EPO		1	A
Atenolol	Tenormin	3	B
Atipamazole		2	B
Atomoxetine	Strattera	2	A
Atracurium	Tracrium	2	A
Atropine		3	B
Azacylonol	Frenque	2	A
Azaperone	Stresnil, Suicalm, Fentaz (with Fentanyl)	2	A
Baclofen	Lioresal	4	B
Barbital	Veronal	2	A
Barbiturates		2	A
Beclomethasone	Propaderm	4	C
Bemegride	Megimide, Mikedimide	2	A
Benazepril	Lotrel, Lotensin	3	((~~B~~)) A
Bendroflumethiazide	Naturetin	4	B
Benoxaprofen		2	B
Benoxinate	((~~Doraseaine~~)) Dorsacaine	4	C
Benperidol	Anquil	2	A
Bentazepam	Tiadipona	2	A
Benzactizine	Deprol, Bronchodiletten	2	A
Benzocaine		4	B
Benzoctamine		2	A
Benzodiazepines		2	A
Benzonatate	Tessalon, Tessalon Perles, Zonatuss	2	A
Benzphetamine	Didrex	2	A
Benzthiazide		4	B
Benztropine	Cogentin	2	A
Benzylpiperazine (BZP)		1	A
Bepridil	Bepadin	4	B
((~~*~~))Betamethasone	Betasone, etc.	4	C
Betaxolol	Kerlone	3	B

Drug	Trade Name	Class	Penalty Class
Bethanechol	Uriecholine, ((~~Duviod~~)) Duvoid	4	C
Bethanidine	Esbatal	3	A
Biperiden	Akineton	3	A
Biriperone		2	A
Bisoprolol	Zebeta, Bisobloc, etc.	3	B
Bitolterol	Effectin	3	A
Bolandiol (estr-4-ene-3β, 17β-diol)		3	A
Bolasterone		3	A
((~~±~~))Boldenone	Equipose	3	B
Boldione		3	A
Bretylium	Bretylol	3	B
Brimonidine	Alphagan	2	A
Bromazepam	Lexotan, Lectopam	2	A
Bromfenac	Duract	3	A
Bromhexine	Oletor, etc.	4	B
Bromisovalum	Diffucord, etc.	2	A
Bromocriptine	Parlodel	2	A
Bromodiphenhydramine		3	B
Bromperidol	Bromidol	2	A
Brompheniramine	Diemtane, Disomer	3	B
Brotizolam	Brotocol	2	A
Budesonide	Pulmacort, Rhinocort	4	C
Bufexamac		3	A
Bumetanide	Bumex	3	B
((~~±~~))Bupivacaine	Marcaine	2	A
Buprenorphine	Temgesic	2	A
Bupropion	Wellbutrin	2	A
Buspirone	Buspar	2	A
Butabarbital (Secbutobarbitone)	Butacaps, Butasol, etc.	2	A
Butacaine	Butyn	2	A
Butalbital (Talbutal)	Fiorinal	2	A
Butamben (butyl aminobenzoate)	Butesin	4	C
Butanilicaine	Hostacain	2	A
Butaperazine	Repoise	2	A
Butoctamide	Listomin	2	A
((~~±~~))Butorphanol	Stadol, Torbugesic	3	B
Butoxycaine	Stadacain	4	B
N-Butylscopolamine		4	C
((~~±~~))Caffeine		2	B
Calusterone	Methosorb	3	A
Camazepam	Paxor	2	A
Camphor		4	C
Candesartan	((~~Atacand~~)) Atcand	3	B

Drug	Trade Name	Class	Penalty Class
Cannabidiol (CBD) (if THC content more than 0.3% penalty 1A)	Anti-epileptic, analgesic	3	B
Canrenone		4	C
Capsaicin		2	B
Captodiame	Covatine	2	A
Captopril	Capolen	3	B
Carazolol	Carbacel, Conducton	3	A
Carbachol	Lentin, Doryl	3	B
Carbamezapine	Tegretol	3	B
Carbamylated EPO		1	A
Carbazochrome		4	B
Carbidopa + levodopa	Sinemet	2	A
Carbinoxamine	Clistin	3	B
Carbromol	Mifudorm	2	A
Cardarine (GW-501516)		2	A
Carfentanil		1	A
Carisoprodol	Soma, Rela	2	B
Carphenazine	Proketazine	2	A
Carpipramine	Prazinil	2	A
Carprofen	Rimadyl	4	B
Carteolol	Cartrol	3	B
Carticaine (see Articaine)	Septocaine; Ultracaine, etc.	2	((~~A~~)) B
Carvedilol	Coreg	3	B
Cathinone	khat, kat, qat, quat, chat, ((~~atha~~)) catha, Abyssinian tea, African tea	1	A
Celecoxib	Celebrex	3	B
Cetirizine	Zyrtec	4	C
Chloral betaine	Beta-Chlor	2	A
Chloral hydrate	Nactec, Oridrate, etc.	2	A
((~~Chloradldehyde~~)) Chloraldehyde (chloral)		2	A
Chloralose (Alpha-Chloralose)		2	A
Chlordiazepoxide	Librium	2	A
Chlorhexidol		2	A
Chlormerodrin	Neohydrin	4	B
Chlormezanone	Trancopal	2	A
Chloroform		2	A
Chlorophenesin	Maolate	4	C
Chloroprocaine	Nesacaine	2	A
Chloroquine	Avloclor	4	C
Chlorothiazide	Diuril	4	B
Chlorpheniramine	Chlortriemton, etc.	4	B
Chlorproethazine	Newiplege	2	A
((~~Chlorpheniramine~~	~~Chlortriemton, etc.~~	~~4~~	~~B~~))

Drug	Trade Name	Class	Penalty Class
Chlorpromazine	Thorazine, Largactil	1	A
Chlorprothixene	Taractan	2	A
Chlorthalidone	Hydroton	4	B
Chlorzoxazone	Paraflex	4	B
Chorionic Gonadotropin (GC)		3	B
Ciclesonide		4	C
Cilostazol	Pletal	4	B
Cimeterol		3	A
((~~*~~))Cimetidine	Tagamet	5	D
Cinchocaine	Nupercaine	2	((~~A~~)) B
Citalopram	Celex	2	A
Clanobutin		4	B
Clemastine	Tavist	3	B
((~~*~~))Clenbuterol	Ventipulmin	3	B
Clibucaine	Batrax	2	A
Clidinium	Quarezan, Clindex, etc.	3	B
Clobazam	Urbanyl	2	A
Clobetasol	Temovate	4	C
Clocapramine		2	A
Clocortolone	Cloderm	4	C
Clofenamide		4	B
Clomethiazole (Chlormethiazole)		2	A
Clomiphene		3	B
Clomipramine	Anafranil	2	A
Clonazepam	Klonopin	2	A
Clonidine	Catapres	3	B
Clorazepate	Tranxene	2	A
Clormecaine	Placacid	2	A
Clostebol		3	A
Clothiapine	Entermin	2	A
Clotiazepam	Trecalmo, Rize	2	A
Cloxazolam	Enadel, Sepazon, Tolestan	2	A
Clozapine	Clozaril, Leponex	2	A
CNTO 530		1	A
Cobalt		3	B
((~~a-Cobratoxin~~		~~1~~	~~A~~))
Cocaine		1	((~~B~~[+])) A
Codeine		1	A
Colchicine		4	B
Conorphone		2	A
Corticaine	Ultracain	2	A
Corticotrophind		3	B
Cortisone	Cortone, etc.	4	C

Drug	Trade Name	Class	Penalty Class
Cromolyn	Intel	5	D
Crotetamide		2	A
Cyamemazine	Tercian	2	A
Cyclandelate	Cyclospasmol	3	A
Cyclizine	Merazine	3	B
Cyclobarbital	Phanodorm	2	A
Cyclobenzaprine	Flexeril	4	B
Cyclofenil		3	B
Cyclomethylcaine	Surfacaine	4	C
Cyclothiazide	((~~Anyhydron~~)) Anhydron, Renazide	4	B
Cycrimine	Pagitane	3	B
Cyproheptadine	((~~Pericactin~~)) Periactin	3	B
Danazol	Danocrine	3	B
((~~*~~))Dantrolene	Dantrium	4	C
Darbepoetin	Aranesp	1	A
Darbepoetin (depo)		1	A
Decamethonium	Syncurine	2	A
Dehydrochloromethyltestosterone		3	A
Dembroxol (Dembrexine)	Sputolysin	4	C
Demoxepam		2	A
Deoxycorticosterone	Percortin, DOCA, Descotone, Dorcostrin	4	C
Deracoxib	Deremaxx	3	B
Dermorphin		1	A
Desipramine	Norpromine, Pertofrane	2	A
((~~Desonite~~)) Desonide	Des Owen	4	C
Desoximetasone	Topicort	4	C
Desoxymethyltestosterone		3	A
((~~*~~))Detomidine	Dormosedan	3	B
((~~*~~))Dexamethasone	Axium, etc.	4	C
Dextromethorphan		4	B
Dextromoramide	Palfium, Narcolo	1	A
Dextropropoxyphene	Darvon	3	B
Dezocine	Dalgan®	2	A
Diamorphine		1	A
Diazepam	Valium	3	B
Diazoxide	Proglycem	3	B
Dibucaine	Nupercainal, Cinchocaine	2	B
Dichloralphenazone	Febenol, Isocom	2	A
((~~Dicholorphenamide~~)) Dichlorphenamide	Daramide	4	C
((~~*~~))Diclofenac	Voltaren, Voltarol	4	C
Dicumarol	Dicumarol	5	D

Drug	Trade Name	Class	Penalty Class
Diethylpropion	Tepanil, etc.	2	A
Diethylthiambutene	Themalon	2	A
Diflorasone	Florone, Maxiflor	4	C
Diflucortolone	Flu-Cortinest, etc.	4	C
Diflunisal		3	B
Digitoxin	Crystodigin	4	B
Digoxin	Lanoxin	4	B
Dihydrocodeine	Parcodin	2	A
Dihydroergotamine		4	B
Dihydrotestosterone (17β-hydroxy-5a-androstan-3-one)		3	B
Dilorazepam	Briantum	2	A
Diltiazem	Cardizem	4	B
Dimefline		3	A
Dimethisoquin	Quotane	4	B
((*))Dimethylsulfoxide (DMSO)	Domoso	4	C
Diphenadione		5	((B)) C
Diphenhydramine	Benadryl	3	B
Diphenoxylate	Difenoxin, Lomotil	4	B
Diprenorphine	M50/50	2	A
Dipyridamole	Persantine	3	B
Dipyrone	Novin, Methampyrone	4	((C)) B
Disopyramide	Norpace	4	B
Divalproex	Depakote	3	A
Dixyrazine	Esucos	2	A
Dobutamine	Dobutrex	3	B
((Dopamine)) Donepezil	((Intropin)) Aricept	((2)) 1	A
((Donepezil)) Dopamine	((Aricept)) Intropin	((1)) 2	A
Doxacurium	Nuromax	2	A
Doxapram	Dopram	2	A
Doxazosin		3	A
Doxefazepam	Doxans	2	A
Doxepin	Adapin, Sinequan	2	A
Doxylamine	Decapryn	3	B
Dromostanolone	Drolban	3	B
Droperidol	Inapsine, Droleptan, Innovar-Vet (with Fentanyl)	2	A
Drostanolone		3	A
Duloxetine		2	A
Dyclonine	Dyclone	4	C
Dyphylline		3	B
Edrophonium	Tensilon	3	B

Drug	Trade Name	Class	Penalty Class
((~~Elenac~~		~~4~~	~~B~~))
Eletripan	Relpax	3	A
Eltenac		4	B
Enalapril (metabolite enaloprilat)	Vasotec	3	A
Enciprazine		2	A
Endorphins		1	A
Enkephalins		1	A
Ephedrine		2	A
Epi-dihydrotestosterone		3	B
Epibatidine		2	A
Epinephrine		2	A
Epitestosterone		3	B
EPO-Fc		1	A
EPO-mimetic peptides (EMP)		1	A
Ergoloid mesylates (dihydroergocornine mesylate, dihydroergocristine mesylate, and ((~~diyhdroergocryptine~~)) dihydroergocryptine mesylate)		2	A
Ergonovine	Ergotrate	4	C
Ergotamine	Gynergen, ((~~Cafegot~~)) Cafergot, etc.	4	B
Erthrityl tetranitrate	Cardilate	3	A
Erythropoietin (EPO)	Epogen, Procrit, etc.	1	A
Esmolol	Brevibloc	3	B
Esomeprazole	Nexium	5	D
Estazolam	Domnamid, Eurodin, Nuctalon	2	A
Eszopiclone		2	A
Etacrynic acid		3	C
Etamiphylline		3	B
Etanercept	Enbrel	4	B
Ethacrynic Acid	Edecrin	3	B
Ethamivan		2	A
Ethanol		2	A
Ethchlorvynol	Placidyl	2	A
Ethinamate	Valmid	2	A
Ethoheptazine	Zactane	2	A
Ethopropazine	Parsidol	2	A
Ethosuximide	Zarontin	3	A
Ethotoin	Peganone	4	B
Ethoxzolamide	((~~Cardase, Ehtamide~~)) Cardrase, Ethamide	4	C
Ethylaminobenzoate (Benzocaine)	Semets, etc.	4	C
Ethylestrenol	Maxibolin, Organon	3	B
Ethylisobutrazine	Diquel	2	A

Drug	Trade Name	Class	Penalty Class
Ethylmorphine	Dionin	1	A
Ethylnorepinephrine	Bronkephrine	3	A
Ethylphenidate		1	A
Etidocaine	Duranest	2	A
Etifoxin	Stresam	2	A
Etiocholanolone		3	B
Etizolam	Depas, Pasaden	2	A
Etodolac	Lodine	3	B
Etodroxizine	Indunox	2	A
Etomidate		2	A
Etorphine ((~~HCl~~)) HC1	M99	1	A
Exemestane	Aromatase inhibitors	3	B
Famotidine	Gaster, etc.	5	D
Felbamate	Felbatol	3	B
Felodipine	Plendil	4	B
((~~Fenabamate~~)) Fenarbamate	Tymium	2	A
Fenbufen	Cincopal	3	B
Fenclozic Acid	((~~Cincopal~~)) Mylax	2	B
Fenfluramine	Pondimin	2	A
Fenoldopam	Corlopam	3	B
Fenoprofen	Nalfon	3	B
Fenoterol	Berotec	3	B
Fenspiride	Respiride, Respan, etc.	3	B
Fentanyl	Sublimaze	1	A
Fentiazac		3	B
Fexofenadine	Allegra	4	C
Fibroblast Growth Factors, (FGFs), Hepatocyte Growth Factors, (HGF), Insulin-like Growth Factor-1 (IGF) and its analogues, Mechano Growth Factors, (mgfs), Platelet-Derived Growth Factor, (PDGF), Vascular-Endothelial Growth Factor, (VEGF), and any other growth factor affecting muscle, tendon or ligament protein synthesis/degradation, vascularization, energy utilization, regenerative capacity or fiber type switching		3	A
((~~*~~))Firocoxib		4	C
Flecainide	Idalon	4	B
Floctafenine	Idalon, Idarac	4	B
Fluanisone	Sedalande	2	A
((~~Flucinolone~~	~~Synalar, etc.~~	~~4~~	~~C~~))
Fludiazepam	Erispam	2	A
Fludrocortisone	Alforone, etc.	4	C
Flufenamic Acid		3	B
Flumethasone	Flucort, etc.	4	C

Drug	Trade Name	Class	Penalty Class
Flumethiazide	Ademol	4	B
Flunarizine	Sibelium	4	B
Flunisolide	Bronilide, etc.	4	C
Flunitrazepam	Rohypnol, Narcozep, Darkene, Hypnodorm	2	A
((~~*~~))Flunixin	Banamine	4	C*
Fluocinolone	Synalar	4	C
Flucinonide	Licon, Lidex	4	C
Fluopromazine	Psyquil, Siquil	2	A
Fluoresone	Caducid	2	A
Fluorometholone	FML	4	C
Fluoroprednisolone	((~~Predef-2X~~))	4	B
Fluoxetine	Prozac	2	A
Fluoxymesterone	Halotestin	3	B
Flupenthixol	Depixol, Fluanxol	2	A
((~~*~~))Fluphenazine	Prolixin, Permitil, Anatensol, etc.	2	((~~A~~)) B
Flupirtine	Katadolone	3	A
Fluprednisolone	Alphadrol	4	C
Flurandrenolide	Cordran	4	C
Flurazepam	Dalmane	2	A
Flurbiprofen	Froben	3	B
Fluspirilene	Imap, Redeptin	2	A
Fluticasone	Flixonase, Flutide	4	C
Flutoprazepam	Restas	2	A
Fluvoxamine	Dumirox, Faverin, etc.	2	A
Formebolone		3	((~~B~~)) A
Formestane	Aromastase inhibitors	3	B
((~~Formeoterol~~)) Formoterol	Altram	3	((~~A~~)) B
Fosinopril	Monopril	3	A
Fosphenytoin	Cerebyx	3	B
Fulvestrant		3	B
Furazabol		3	A
((~~*~~))Furosemide	Lasix	N/A	
Gabapentin	Neurontin	3	B
Galantamine	Reminyl	2	A
Gallamine	Flaxedil	2	A
Gamma Aminobutryic Acid (GABA)	Carolina Gold	3	B
Gepirone		2	A
Gestrinone		3	A
GH-Releasing Peptides (ghrps), e.g., alexamorelin, GHRP-6, hexarelin and pralmorelin (GHRP-2)		3	A
Glutethimide	Doriden	2	A

Drug	Trade Name	Class	Penalty Class
((~~*~~))Glycopyrrolate	Robinul	4	C
Growth Hormone Releasing Hormone (GHRH) and its analogues, e.g., CJC-1295, sermorelin and tesamorelin		3	A
Growth Hormone Secretagogues (GHS), e.g., ghrelin and ghrelin mimetics, e.g., anamorelin and ipamorelin		3	A
Guaifenesin (glycerol guiacolate)	Gecolate	4	C
Guanabenz	Wytensin	3	B
Guanadrel	Hylorel	3	A
Guanethidine	Ismelin	3	A
((~~Guanabenz~~	~~Wytensin~~	~~3~~	~~B~~))
Halazepam	Paxipam	2	A
Halcinonide	Halog	4	C
Halobetasol	Ultravate	4	C
Haloperidol	Haldol	2	A
Haloxazolam	Somelin	2	A
Hemoglobin glutamers	Oxyglobin, Hemopure	2	A
Heptaminol	Corofundol	3	B
Heroin		1	A
Hexafluorenium	Myalexen	2	A
Hexobarbital	Evipal	2	A
Hexocyclium	Tral	4	B
Hexylcaine	Cyclaine	2	B
HIF activators (e.g., Argon, xenon)		3	A
Homatropine	Homapin	3	B
Homophenazine	Pelvichthol	2	A
Hydralazine	Apresoline	3	B
Hydrochlorthiazide	Hydrodiuril	4	B
Hydrocodone (((~~dihydrocodeinone~~)) dihydrocodienone)	Hycodan	1	A
((~~*~~))Hydrocortisone (Cortisol)	Cortef, etc.	4	C
Hydroflumethiazide	Saluron	4	B
Hydromorphone	Dilaudid	1	A
((~~4-Hydroxtestosterone~~		~~3~~	~~B~~))
Hydroxyamphetamine	Paradrine	1	A
((~~*~~))Hydroxyzine	Atarax	2	B
Ibomal	Noctal	2	A
Ibuprofen	Motrin, Advil, ((~~Nuprin~~)) Nurpin, etc.	4	C
Ibutilide	Corvert	3	B
Iloprost	Ventavis	3	A
Imipramine	Imavate, Presamine, Tofranil	2	A
Indapamide	Diuretic	3	C

Drug	Trade Name	Class	Penalty Class
Indomethacin	Indocin	3	B
Infliximab	Remicade	4	B
Insulins		3	B
Ipratropium		3	B
Irbesaten	Avapro	3	A
Isapirone		2	A
Isocarboxazid	Marplan	2	A
Isoetharine	Bronkosol	3	B
((*))Isoflupredone	Predef 2x	4	C
Isomethadone		2	A
Isometheptene	Octin, Octon	4	B
Isopropamide	Darbid	4	B
Isoproterenol	Isoprel	2	A
Isosorbide dinitrate	Isordil	3	B
Isoxicam	Maxicam	2	B
Isoxsuprine	Vasodilan	4	((C)) D
Isradipine	DynaCirc	4	B
Kebuzone		3	B
Ketamine	Ketalar, Ketaset, Vetalar	2	B
Ketazolam	Anxon, Laftram, Solatran, Loftran	2	A
((*))Ketoprofen	Orudis	4	C
Ketorolac	Toradol	3	A
Labetalol	Normodyne	3	B
Lamotrigine	Lamictal	3	A
Lansoprazole		5	D
Lenperone	Elanone-V	2	A
Letosteine	Viscotiol, Visiotal	4	B
Letrozole		3	A
Levamisole		2	B
Levobunolol	Betagan	3	B
Levomethorphan		2	A
Levorphanol	Levo-Dremoran	1	A
((*))Lidocaine	Xylocaine	2	B
Lisinopril	Prinivil, Zestril	3	A
Lithium	Lithizine, Duralith, etc.	2	A
Lobeline		2	A
Lofentanil		1	A
Loflazepate, Ethyl	Victan	((3)) 2	((B)) A
Loperamide	Imodium	((2)) 3	((A)) B
Loprazolam	Dormonort, Havlane	2	A
Loratidine	Claritin	4	C

Drug	Trade Name	Class	Penalty Class
Lorazepam	Ativan	2	A
Lormetazepam	Noctamid	2	A
Losartan	Hyzaar	3	B
Loxapine	Laxitane	2	A
Luteinizing Hormone (LH)		3	B
Mabuterol		3	A
Maprotiline	Ludiomil	2	A
Mazindol	Sanorex	1	A
Mebutamate	Axiten, Dormate, Capla	2	A
Mecamylamine	Inversine	3	B
Meclizine	Antivert, Bonine	3	B
Meclofenamic Acid	Arquel	4	C
Meclofenoxate	Lucidiril, etc.	2	A
Medazepam	Nobrium, etc.	2	A
Medetomidine	Domitor	3	B
Medrysone	Medriusar, etc.	4	C
Mefenamic Acid	Ponstel	3	B
Meldonium	Mildronate, et al.	1	A
Meloxicam	Mobic	4	B
Melperone	Eunerpan	2	A
Memantine	Namenda	2	A
((~~Menpenzolate~~		~~3~~	~~B~~))
Meparfynol	Oblivon	2	A
Mepazine	Pacatal	2	A
Mepenzolate	Cantil	3	((~~A~~)) B
Meperidine	Demerol	1	A
Mephenesin	Tolserol	4	B
Mephenoxalone	Control, etc.	2	A
Mephentermine	Wyamine	1	A
Mephenytoin	Mesantoin	2	A
Mephobarbital (Methylphenobarbital)	Mebaral	2	A
((~~*~~))Mepivacaine	Carbocaine	2	B
Meprobamate	Equanil, Miltown	2	A
Meralluride	Mercuhydrin	4	B
Merbaphen	Novasural	4	B
Mercaptomerin	Thiomerin	4	B
((~~Mercumalilin~~)) Mercumatilin	Cumertilin	4	B
Mersalyl	Salyrgan	4	B
Mesalamine	Asacol	5	C
Mesoridazine	Serentil	2	A
Mestanolone		3	A
Mesterolone		3	A
Metaclazepam	Talis	2	A

Drug	Trade Name	Class	Penalty Class
Metandienone		3	A
Metaproterenol	Alupent, Metaprel	3	B
Metaraminol	Aramine	1	A
Metaxalone	Skelaxin	4	B
Metazocine		2	A
Metenolone		3	((~~B~~)) A
Metformin		2	B
((~~Methachloline~~)) Methacholine		3	A
Methadone	Dolophine	1	A
Methamphetamine	Desoxyn	1	A
((~~Methandienone~~		~~3~~	~~A~~))
Methandriol (Methylandrostenediol)	Probolic	3	A
Methandrostenolone	Dianabol	3	A
Methantheline	Banthine	3	B
Methapyrilene	Histadyl, etc.	3	B
Methaqualone	Quaalude	1	A
Metharbital	Gemonil	2	A
Methasterone		3	A
Methazolamide	Naptazane	4	C
Methcathinone		1	A
Methdilazine	Tacaryl	3	B
Methenolone	Primobolan	3	A
Methixene	Trest	3	A
((~~*~~))Methocarbamol	Robaxin	4	C
Methohexital	Brevital	2	A
Methotrexate	Folex, Nexate, etc.	4	B
Methotrimeprazine	Levoprome, Neurocil, etc.	2	A
Methoxamine	Vasoxyl	3	A
Methoxyphenamine	Orthoxide	3	A
Methoxypolyethylene glycolepoetin beta (CERA)		1	A
Methscopolamine	Pamine	4	B
Methsuximide	Celontin	((~~3~~)) 4	((~~A~~)) B
Methyclothiazide	Enduron	4	B
Methyl-1-testosterone		3	A
Methylatropine		3	B
((~~Methyclorthiazide~~	~~Enduron~~	~~4~~	~~B~~))
Methyldienolone		3	A
Methyldopa	Aldomet	3	A
Methylergonovine	Methergine	4	C
Methylhexaneamine (Methylhexanamine)	Geranamine	1	A
((~~Methylergonovine~~	~~Methergine~~	~~4~~	~~C~~))

Drug	Trade Name	Class	Penalty Class
Methylnortestosterone (Trestolone)		3	A
Methylphenidate	Ritalin	1	A
((~~*~~))Methylprednisolone	Medrol	4	C
((~~Methylsuxamide~~		~~4~~	~~B~~))
Methyltestosterone	Metandren	3	((~~A~~)) B
((~~Methyl-1-testosterone~~		~~3~~	~~A~~))
Methyprylon	Noludar	2	A
Methysergide	Sansert	4	B
Metiamide		4	B
Metoclopramide	Reglan	4	C
Metocurine	Metubine	2	A
Metolazone		3	B
Metomidate	Hypnodil	2	A
Metopon (((~~methyldihydromorphinone~~)) methydihydromorphinone)		1	A
Metoprolol	Lopressor	3	B
Metribolone		3	A
Mexazolam	Melex	2	A
((~~Mexilitine~~)) Mexiletine	((~~Mexilil~~)) Mexitil	4	B
Mibefradil	Posicor	3	B
Mibolerone		3	B
Midazolam	Versad	3	B
Midodrine	Pro-Amiline	3	B
Milrinone		4	B
Minoxidil	Loniten	3	B
((~~Mirtazapine~~)) Mitrazepine	Remeron	2	A
((~~Misoprostel~~)) Misoprostol	Cytotec	5	D
Mitragynine	Kratom	1	A
Mivacurium	Mivacron	2	A
Modafinil	Provigil	2	A
Moexipril (metabolite moexiprilat)	Uniretic	3	B
Molindone	Moban	2	A
Mometasone	Elocon	4	C
Montelukast	Singulair	4	C
Moperone	Luvatren	2	A
Morphine		1	A
Mosaprimine		2	A
Muscarine		3	A
Myo-Inositol ((~~Trispyrophospahte~~)) trispyro-phosphate (ITPP)		1	A
N-butylscopolamine		4	C
Nabumetone	Anthraxan, Relafen, Reflifex	3	A
Nadol	Corgard	3	B

Drug	Trade Name	Class	Penalty Class
Naepaine	Amylsine	2	A
Nalbuphine	Nubain	2	A
Nalorphine	Nalline, Lethidrone	2	A
Naloxone	Narcan	3	B
Naltrexone	Revia	3	B
((~~*~~))Nandrolone	Nandrolin, Laurabolin, Durabolin	3	B
Naphazoline	Privine	4	B
Naproxen	Equiproxen, Naprosyn	4	C
Naratriptan	Amerge	3	B
Nebivolol		3	A
Nedocromil	Tilade	5	D
Nefazodone	Serzone	2	A
Nefopam		3	A
Neostigmine	Prostigmine	3	B
Nicardipine	Cardine	4	B
Nifedipine	Procardia	4	B
Niflumic Acid	Nifluril	3	B
Nikethamide	Coramine	1	A
Nimesulide		3	B
Nimetazepam	Erimin	2	A
Nimodipine	Nemotop	4	B
Nitrazepam	Mogadon	2	A
Nitroglycerin		2	B
Nizatidine	Axid	5	((~~C~~)) D
((~~19-Norandrostenediol~~		~~3~~	~~B~~
~~19-Norandrostenedione~~		~~3~~	~~B~~))
Norandrosterone		3	B
Norbolethone/Norboletone		3	A
Norclostebol		3	((~~B~~)) A
((~~Norclostebon~~		~~3~~	~~A~~))
Nordiazepam	Calmday, ((~~Nordaaz~~)) Nordaz, etc.	2	A
Norepinephrine		2	A
Norethandrolone		3	A
Nortestosterone		3	B
Nortiptyline	Aventyl, Pamelor	2	A
Nylidrine	Arlidin	3	A
Olanzepine	Zyprexa	2	A
Olmesartan	Benicar	3	A
Olsalazine	Dipentum	5	C
((~~*~~))Omeprozole	Prilosec, Losec	5	D
Orphenadrine	Norlfex	4	B

Drug	Trade Name	Class	Penalty Class
Oxabolone		3	A
Oxandrolone	Anavar	3	B
Oxaprozin	Daypro, Deflam	4	B
Oxazepam	Serax	2	A
Oxazolam	Serenal	2	A
Oxcarbazepine	Trileptal	3	A
Oxilofrine (hydroxyephedrine)		2	A
Oxprenolol	Trasicor	3	A
Oxycodone	Percodan	1	A
Oxymesterone		3	((~~B~~)) A
Oxymetazoline	Afrin	4	B
Oxymetholone	Adroyd, Anadrol	3	B
Oxymorphone	Numorphan	1	A
Oxyperitine	Forit, Integrin	2	A
Oxyphenbutazone	Tandearil	4	C
Oxyphencyclimine	Daricon	4	B
Oxyphenonium	Antrenyl	4	B
Paliperidone		2	A
Pancuronium	Pavulon	2	A
Pantoprazole	Protonix	5	D
Papaverine	Pavagen, etc.	3	A
Paraldehyde	Paral	2	A
Paramethadione	Paradione	3	A
Paramethasone	Haldrone	4	C
Pargyline	Eutonyl	3	A
Paroxetine	Paxil, Seroxat	2	A
Peginesatide		1	A
Pemoline	Cylert	1	A
Penbutolol	Levatol	3	B
Penfluridol	Cyperon	2	A
((~~Pentaerythritol~~)) Pentaerythritol tetranitrate	Duotrate	3	A
Pentazocine	Talwin	3	B
Pentobarbital	Nembutal	2	A
Pentoxyfylline	Trental, Vazofirin	4	((~~C~~)) D
Pentylenetetrazol	Metrazol, Nioric	1	A
Perazine	Taxilan	2	A
Perfluorocarbons		2	A
Perfluorodecahydronophthalene		2	A
Perflurodecolin		2	A
((~~Perfluorodecahydronophthalene~~		~~2~~	~~A~~))
Perfluorooctylbromide		2	A
Perfluorotripropylamine		2	A
((~~Perfluorocarbons~~		~~2~~	~~A~~))

Drug	Trade Name	Class	Penalty Class
Pergolide	Permax	3	B
((~~Pericianzine~~)) Periciazine	Alodept, etc.	2	A
Perindopril	Biprel	3	A
Perlapine	Hypnodin	2	A
Perphenazine	Trilafon	2	A
Phenacemide	Phenurone	4	B
Phenaglycodol	Acalo, Alcamid, etc.	2	A
Phenazocine	Narphen	1	A
Phencyclidine (PCP)	Sernylan	1	A
Phendimetrazine	Bontril, etc.	1	A
Phenelzine	Nardelzine, Nardil	2	A
Phenindione	Hedulin	5	D
Phenmetrazine	Preludin	1	A
Phenobarbital	Luminal	2	A
Phenoxybenzamine	Dibenzyline	3	B
Phenprocoumon	Liquamar	5	D
Phensuximide	Milontin	4	B
Phentermine	Iomamin	2	A
Phentolamine	Regitine	3	B
((~~*~~))Phenylbutazone	Butazolidin	4	C
Phenylephrine	Isophrin, Neo-Synephrine	3	B
Phenylpropanolamine	Propadrine	3	B
Phenytoin	Dilantin	4	B
Physostigmine	Eserine	3	A
Picrotoxin		1	A
Piminodine	Alvodine, Cimadon	2	A
Pimobendan		2	B
Pimozide	Orap	2	A
Pinazepam	Domar	2	A
Pindolol	Viskin	3	B
Pipamperone	Dipiperon	2	A
Pipecuronium	Arduan	2	A
Pipequaline		2	A
Piperacetazine	Psymod, Quide	2	A
Piperocaine	Metycaine	2	A
Pipotiazine	Lonseren, Piportil	2	A
Pipradrol	Datril, Gerondyl, etc.	2	A
Piquindone		2	A
Pirbuterol	Maxair	3	B
Pirenzapine	Gastrozepin	5	((~~B~~)) C
Piretanide	Arelix, Tauliz	3	B
Piritramide		1	A
Piroxicam	Feldene	4	B

Drug	Trade Name	Class	Penalty Class
Plasma expanders (e.g., Bycerol; intravenous administration of albumin, dextran, hydroxyethyl starch and mannitol)		3	A
Polyethylene glycol		5	D
Polythiazide	Renese	4	B
Pramoxine	Tronothaine	4	C
Prasterone (dehydroepiandrosterone, DHEA, 3β-hydroxyandrost-5-en-17-one)		3	B
Prazepam	Verstran, Centrax	2	A
Prazosin	Minipress	3	B
((*))Prednisolone	Delta-Cortef, etc.	4	C
Prednisone	Meticorten, etc.	4	C
Prilocaine	Citanest	2	((A)) B
Primidone	Mysoline	3	B
Probenecid		4	C
Procainamide	Pronestyl	4	B
((*))Procaine		3	B
Procaterol	Pro Air	3	A
Prochlorperazine	Darbazine, Compazine	2	A
Procyclidine	Kemadrin	3	B
((*))Promazine	Sparine	3	B
Promethazine	Phenergan	3	B
Propafenone	Rythmol	4	B
Propanidid		2	A
Propantheline	Pro-Banthine	3	((A)) B
Proparacaine	Ophthaine	4	C
Propentophylline	Karsivan	3	B
Propiomazine	Largon	2	A
Propionylpromazine	Tranvet	2	A
Propiram		2	A
Propofol	Diprivan, Disoprivan	2	A
Propoxycaine	Ravocaine	2	A
Propranolol	Inderal	3	B
Propylhexedrine	Benzedrex	4	B
Prostanazol		3	((B)) A
((Prostanol		3	A))
Prothipendyl	Dominal	2	A
Protolylol	Ventaire	3	A
Protriptyline	Concordin, Triptil	2	A
Proxibarbital	Axeen, Centralgol	2	A
Pseudoephedrine	Cenafed, Novafed	3	B
Pryidostigmine	Mestinon, Regonol	3	B
((*))Pyrilamine	Neoantergan, Equihist	3	B
Pyrithyldione	Hybersulfan, Sonodor	2	A

Drug	Trade Name	Class	Penalty Class
Quazipam	Doral	2	A
Quetiapine	Seroquel	2	A
Quinapril, Quinaprilat	Accupril	3	A
Quinbolone		3	A
((~~Quinapril, Quinaprilat~~	~~Accupril~~	~~3~~	~~A~~))
Quinidine	Quinidex, Quinicardine	4	B
Rabeprazole	Aciphex	5	D
Racemethorphan		2	A
Racemorphan		2	A
Raclopride		2	A
Ractopamine	((~~Raylean~~)) Paylean	2	A
Raloxifene		3	B
Ramipril, metabolite Ramiprilat	Altace	3	A
((~~*~~))Rantidine	Zantac	5	D
Remifentanil	Ultiva	1	A
Remoxipride	Roxiam	2	A
Reserpine	Serpasil	2	((~~A~~)) B
Rilmazafone		2	A
Risperidone		2	A
Ritanserin		2	A
Ritodrine	Yutopar	3	B
Rivastigmine	Exelon	2	A
Rizatriptan	Maxalt	3	B
Rocuronium	Zemuron	2	A
Rofecoxib	Vioxx	2	B
Romifidine	Sedivet	3	B
Ropivacaine	Naropin	2	A
Roxadustat (FG-4592)		1	A
((~~Ropivacaine~~	~~Naropin~~	~~2~~	~~A~~))
Salicylamide		4	C
((~~*~~))Salicylates		4	C
Salmeterol		3	B
Scopolamine (Hyoscine)	Triptone	4	C
Secobarbital (Quinalbarbitone)	Seconal	2	A
Selegiline	Eldepryl, Jumex	2	A
Sertraline	Lustral, Zoloft	2	A
Sibutramine	Meridia	3	B
Sildenafil	Viagra	3	A
Snake Venoms		1	A
Somatrem	((~~Protropon~~)) Protropin	2	A
Somatropin	Nutropin	2	A
Sotalol	Betapace, Sotacor	3	B
Spiclomazine		2	A

Drug	Trade Name	Class	Penalty Class
Spiperone		2	A
Spirapril, metabolite Spiraprilat	Renomax	3	A
Spironalactone	Aldactone	4	B
Stanozolol	Winstrol-V	3	B
Stenbolone		3	A
Strychine		1	A
Succinylcholine	Sucostrin, Quelin, etc.	2	A
Sufentanil	Sufenta	1	A
Sulfasalazine	Axulfidine, Azaline	4	C
Sulfondiethylmethane		2	A
Sulfonmethane		2	A
Sulforidazine	Inofal	2	A
Sulindac	Clinoril	3	((~~A~~)) B
Sulpiride	Aiglonyl, Sulpitil	2	A
Sultopride	Barnetil	2	A
Sumatriptan	Imitrex	3	B
Synthetic cannabis	Spice, K2, Kronic	1	A
Tadalasil	Cialis	3	A
Talbutal	Lotusate	2	A
Tamoxifen		3	B
Tandospirone		2	A
TCO2		3	B
Telmisartin	Micardis	3	B
Temazepam	Restoril	2	A
Tenoxicam	Alganex, etc.	3	B
Tepoxalin		3	B
Terazosin	Hytrin	3	A
Terbutaline	Brethine, Bricanyl	3	B
Terfenadine	Seldan, Triludan	4	C
Testolactone	Teslac	3	B
((~~*~~))Testosterone		3	B
((~~Tetrabenzaine~~)) Tetrabenazine	Nitoman	2	A
Tetracaine	Pontocaine	2	A
Tetrahydrogestrinone		3	A
Tetrahydrozoline	Tyzine	4	B
Tetrazepam	Musaril, Myolastin	2	A
THC (tetrahydrocannabinol)		1	A
Thebaine		2	A
((~~*~~))Theobromine		4	B
Theophylline	Aqualphyllin, etc.	3	B
Thialbarbital	Kemithal	2	A
Thiamylal	Surital	2	A
Thiethylperazine	Torecan	2	A

Drug	Trade Name	Class	Penalty Class
Thiopental	Pentothal	2	A
Thiopropazate	Dartal	2	A
Thiorpoperazine	Mejeptil	2	A
Thioridazine	Mellaril	2	A
Thiosalicylate		4	B
Thiothixene	Navane	2	A
Thiphenamil	Trocinate	4	B
Thyroxine and thyroid modulators/hormones including, but not limited to, those containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof	Levothyroxine	3	C
Tiapride	Italprid, Luxoben, etc.	2	A
Tiaprofenic Acid	Surgam	3	B
Tibolone		3	A
Tiletamine	Component of Telazol	2	A
Timiperone	Tolopelon	2	A
Timolol	Blocardrin	3	B
Tocainide	Tonocard	4	B
Tofisopam	Grandaxain, Seriel	2	A
Tolazoline	Priscoline	3	B
Tolfenamic Acid		4	B
Tolmetin	Tolectin	3	B
Topirimate	Topamax	2	A
Toremifene		3	B
Torsemide (Torasemide)	Demadex	3	A
Tramadol	Ultram	2	((~~A~~)) B
Trandolapril (and metabolite, Trandolaprilat)	Tarka	3	B
Tranexamic Acid		4	C
Tranylcypromine	((~~Parnatet~~)) Parnate	2	A
((~~Trazonde~~)) Trazodone	Desyrel	2	A
Trenbolone	Finoplix	3	B
Tretoquinol	Inolin	2	A
((~~*~~))Triamcinolone	Vetalog, etc.	4	C
Triamterene	Dyrenium	4	B
Triazolam	Halcion	2	A
Tribromethanol		2	A
Tricaine methanesulfonate	Finquel	2	A
Trichlormethiazide	Naqua, Naquasone	4	C
Trichloroethanol		2	A
Tricholoethylene	Trilene, Trimar	2	A
Triclofos	Triclos	2	A
Tridihexethyl	Pathilon	4	B
Trifluomeprazine	Nortran	2	A
Trifluoperazine	Stelazine	2	A

Drug	Trade Name	Class	Penalty Class
Trifluperidol	Triperidol	2	A
Triflupromazine	Vetame, Vesprin	2	A
Trihexylphenidyl	Artane	3	A
Trimeprazine	Temaril	4	B
Trimetazidine		3	B
Trimethadione	Tridione	3	B
Trimethaphan	Arfonad	3	A
Trimipramine	Surmontil	2	A
Tripelennamine	PBZ	3	B
Triprolidine	Actidil	3	B
Tubocurarine (Curare)	Metubin	2	A
Tybamate	Benvil, Nospan, etc.	2	A
Urethane		2	A
Valdecoxib		2	((A)) B
Valerenic Acid		3	A
Valnoctamide	Nirvanyl	2	A
Valsartan	Diovan	3	B
Vardenafil	Levitra	3	A
Vedaprofen		4	B
Venlafaxine	((Effexor)) Efflexor	2	A
Veralipride	Accional, Veralipril	2	A
Verapamil	Calan, Isoptin	4	B
Vercuronium	Norcuron	2	A
Viloxazine	Catatrol, Vivalan, etc.	2	A
Vinbarbital	Delvinol	2	A
Vinylbital	Optanox, Speda	2	A
Warfarin	Coumadin, Coufarin	5	D
((*))Xylazine	Rompun, Bay VA 1470	3	B
Xylometazoline	Otrivin	4	B
Yohimbine		2	B
Zafirlukast	Accolate	4	C
Zaleplon	Sonata	2	A
Zeranol	Ralgro	4	C
Ziconotide		1	A
Zileuton	Zyflo	4	C
Zilpaterol hydrochloride	Zilpaterol	2	A
Ziprasidone	Geodon	2	A
Zolazepam		2	A
Zolmitriptan	Zomig	3	B
Zolpidem	Ambien, Stilnox	2	A
Zomepirac	Zomax	2	B
Zonisamide	Zonegran	3	B
Zopiclone	Imovan	2	A

Drug	Trade Name	Class	Penalty Class
Zotepine	Lodopin	2	A
Zuclopenthixol	Ciatyl, Cesordinol	2	A
((~~Δ-1-androstene-3, 17-diol~~		~~3~~	~~A~~
~~Δ-1-androstene-3, 17-dione~~		~~3~~	~~A~~
~~Δ-1-dihydrotestosterone~~		~~3~~	~~A~~))

[1] Penalty class "A" recommended if regulators can prove intentional administration.

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

WSR 19-22-084
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:23 a.m.]

November 6, 2019
Douglas L. Moore
Executive Secretary

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-09-044.

Title of Rule and Other Identifying Information: WAC 260-52-045 The riding crop.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Would limit the number of consecutive times the riding crop could be used by a jockey during a race.

Reasons Supporting Proposal: With increased public scrutiny and for the protection of the horses, jockeys would be limited to three consecutive times the riding crop could be used during a race.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

AMENDATORY SECTION (Amending WSR 18-07-017, filed 3/9/18, effective 4/9/18)

WAC 260-52-045 The riding crop. (1) Only riding crops approved by the stewards and meeting the following specifications will be allowed:

(a) Maximum weight of 8 ounces;

(b) Maximum length (including flap) of 30 inches;

(c) Minimum diameter of the shaft of one-half inch; and

(d) The contact area of the shaft must be smooth with no protrusions or raised surface.

(2) The only additional feature that may be attached to the riding crop is a flap. If a flap is attached it must meet the following specifications:

(a) Maximum length of the flap from the end of the shaft is one inch;

(b) Maximum width of the flap is 1.6 inches, with a minimum width of 0.8 inch;

(c) The flap, from the end of the shaft, may not contain any reinforcements or additions;

(d) There may be no binding within 7 inches of the end of the flap;

(e) The flap must be humane, cushioned with memory foam or other similar shock absorbing material, unaltered from the original manufacturer, and sewn down each side of the outer layer;

(f) The flap must be dark in color and made of a material that does not harden over time; and

(g) The requirement for the riding crop is waived for Class C race meets as defined in RCW 67.16.130.

(3) The riding crop is subject to approval by the stewards and subject to inspection by any steward, commission racing official, official veterinarian, or investigator.

(4) Although the use of a riding crop is not required, any jockey who uses a riding crop during a race may do so only in a manner consistent with exerting his/her best efforts ((~~to win~~)). In all races where a jockey will ride without a riding crop, an announcement will be made over the public address system. No device designed to increase or retard the speed of a horse, other than an approved riding crop is permitted on

the grounds of any racing association. Riding crops may not be used on 2-year-old horses before April 1 of each year.

(5) Prohibited uses of the riding crop include striking a horse:

(a) On the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;

(b) During the post parade or after the finish of the race, except when necessary to control the horse;

(c) Excessively or brutally causing welts or breaks in the skin;

(d) When the horse is clearly out of the race or has obtained its maximum placing;

(e) Persistently even though the horse is showing no response under the riding crop; and

(f) Striking another rider or horse.

(6) The riding crop should only be used for safety, correction, and encouragement. All riders should consider the following when using the riding crop:

(a) When using the crop the rider should give the horse a chance to respond;

(b) A chance to respond is defined as one or more of the following actions:

(i) Pushing on their horse with a rein in each hand keeping the riding crop in the up or down position;

(ii) Showing the horse the riding crop without making contact; and

(iii) Moving the riding crop from one hand to the other.

(c) Using the riding crop in rhythm with the horse's stride.

(7) A rider may not strike a horse more than three times in succession without giving the horse a chance to respond as defined above.

(8) After the race or during training all horses are subject to inspection by a steward, official veterinarian, commission racing official, or investigator.

((~~(8)~~)) (9) Any trainer, owner, or other licensee that instructs a jockey to use the riding crop in a manner not consistent with these rules may be subject to disciplinary action.

WSR 19-22-085
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 6, 2019, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-057.

Title of Rule and Other Identifying Information: WAC 260-34-030 Testing.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds grooms and assistant trainers to the pool of licensees eligible for random testing.

Reasons Supporting Proposal: With the continued possibility of environmental contamination to horses from illegal substances the addition of these licensees will discourage usage by licensees and protect the equine athletes.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 11-07-030, filed 3/10/11, effective 4/10/11)

WAC 260-34-030 Testing. (1) A steward of the horse racing commission, a commission security investigator or the executive secretary, may require any licensee or applicant to provide breath, blood, oral fluids, and/or urine samples for the purpose of drug or alcohol analysis under any of the following circumstances:

(a) When a steward or commission security investigator finds that there is reasonable suspicion to believe that the applicant or licensee has used or is under the influence of alcohol and/or any drug.

(b) When an applicant or licensee has a documented history of an unexplained positive test which indicates illegal drug usage or has a documented history of violating chapter 69.41, 69.45 or 69.50 RCW, WAC 260-34-020 or similar drug-related violation within five years of conviction or release from a correctional institution for that violation. The term "correctional institution" shall include any prison, jail or similar institution in this state or elsewhere.

(c) When a steward or commission security investigator decides to test any licensee or applicant as a condition of any conditional or probationary license.

(d) When any person is riding a horse on the grounds of a licensed racing association.

(e) When a person currently holds a groom or assistant trainer's license and is observed performing the duties of that license while on the grounds of a licensed racing association.

(2) For licensees or applicants who are subject to a field screening urine, or oral fluid test under the provisions in this

chapter, and whose test shows the presence of a controlled substance or alcohol, the field screening test results shall be confirmed by a laboratory acceptable to the commission.

(3) The result of a test conducted with a preliminary breath test (PBT) instrument, or oral swab, shall constitute evidence of a violation of these rules. The results of such a test may be considered for purposes of determining whether the licensee or applicant has consumed alcohol, the level of alcohol concentration, and whether the licensee or applicant has violated a prohibition on the use or consumption of alcohol established in a conditional license.

WSR 19-22-086
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-005.

Title of Rule and Other Identifying Information: WAC 260-60-300 Who may claim.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To ensure licensee[s] that are eligible to claim are not neglecting financial obligations.

Reasons Supporting Proposal: Licensees that currently owe outstanding late bills for their racing operations should not be eligible to utilize assets to "claim horses" until the financial obligations are met.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-60-300 Who may claim. (1)(a) In claiming races, any horse is subject to be claimed for its entered price by any owner licensed by the commission, including a prospective owner who has been issued a claiming certificate, or by a licensed authorized agent for the account of such owner.

(b) An owner or prospective owner is ineligible to claim when they are found by the commission to be in noncompliance with WAC 260-28-030.

(2) In order to claim a horse as a prospective owner, a person will submit to the stewards a completed application for a prospective owner's license and the name of a licensed trainer who will assume the care and responsibility for any horse claimed. The stewards may issue a claiming certificate to the applicant upon satisfactory evidence that the applicant is eligible for an owner's license. Once the prospective owner has successfully claimed a horse and made payment of labor and industry fees due, he/she will be considered an owner. At that time the owner should contact a commission office for a new identification badge.

(3) The names of licensed prospective owners who have been issued a claiming certificate must be prominently displayed in the offices of the commission and the racing secretary.

(4) A claiming certificate will expire forty-five days from the date of issue, but may be extended with approval of the stewards; at the conclusion of the race meet at which it was issued, upon the claim of a horse, or upon issuance or denial of an owner's license, whichever comes first.

(5) No owner or prospective owner may claim more than one horse in any one race.

(6) An authorized agent may claim up to two horses, if each horse is claimed on behalf of entirely different ownerships, and the ownerships do not have a common interest in both claims. An authorized agent may not make a claim on the same horse for different owners.

(7) No more than two claims may be entered with the same trainer listed in any one race.

(8) No trainer may enter or start more than two horses for a claiming price in one race.

WSR 19-22-087
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-058.

Title of Rule and Other Identifying Information: WAC 260-48-620 Pools dependent on betting interests.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.

moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends the requirement for racing associations to offer certain wagering pools based on the number of entries in a race.

Reasons Supporting Proposal: Associations should have the ability to offer pools based on business decisions rather than number of entries to avoid "minus pools" that are a financial loss for the association.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-17-049, filed 8/14/08, effective 9/14/08)

WAC 260-48-620 Pools dependent upon betting interests. Unless the commission or its designee otherwise provides, at the time the pools are opened for wagering, the association:

(1) Must offer win wagering on all races with three or more betting interests. May offer win wagering on all races with two betting interests.

(2) ((~~Must~~)) May offer place wagering on all races with ((~~four~~)) three or more betting interests.

(3) ((~~Must~~)) May offer show wagering on all races with ((~~five~~)) four or more betting interests.

(4) May offer quinella wagering on all races with three or more betting interests.

(5) May offer exacta wagering on all races with two or more betting interests.

(6) May offer trifecta wagering on all races with three or more betting interests.

(7) May offer twin trifecta wagering on all races with six or less betting interests.

(8) May offer superfecta wagering on all races with four or more betting interests.

(9) May offer quinfecta wagering on all races with five or more betting interests.

WSR 19-22-088
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-060.

Title of Rule and Other Identifying Information: WAC 260-36-250 Industrial insurance.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends language to allow the commission to remove the "rounding up" of the department of labor and industries premiums.

Reasons Supporting Proposal: New software is being developed that may not support the rounding up requirement so flexibility is needed in the rule.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 15-03-025, filed 1/9/15, effective 2/9/15)

WAC 260-36-250 Industrial insurance. (1) The horse racing industry labor and industries account only provides coverage for employees of a trainer licensed in the state of Washington and meets the criteria in this section. At the time of submitting a license application, or as provided in this section, all licensed trainers must provide the commission with the name of all licensed employees, including grooms, assistant trainers, exercise riders - farm, and pony riders - farm. Trainers will be required to maintain accurate payroll records and may be required to submit them to the commission or the department of labor and industries for premium verification

and/or claims processing. In addition the trainer will inform the commission of the worksite for each employee. For the purpose of industrial insurance coverage a worksite may only be one of the following locations:

(a) A Washington race track - A race track in the state of Washington granted race dates by the commission. A site will be designated as a Washington race track for the purposes of industrial insurance for only the period of the track's licensed race meet and periods of training when horses are exercised in preparation for competition. This period of time is limited to only that period of time when the stewards have authority on the grounds (WAC 260-24-510(2));

(b) Farm or training center - A farm or training center is any location off the grounds of a licensed race meet. This will include any recognized race track located outside the state of Washington as well as any Washington race track during the period before its period of training or after its licensed race meet. For the purposes of industrial insurance all such locations will be considered a farm or training center.

(2) Grooms and assistant trainers.

(a) A licensed trainer must pay the industrial insurance premiums for all licensed grooms and licensed assistant trainers as established by labor and industries, unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed grooms and licensed assistant trainers while performing the duties of their license for and under the direction of a licensed trainer, and excludes all exercise riders, pony riders, and any other licensed employee of the trainer, whether working at a farm or training center. In addition, licensed spouse grooms are exempt from coverage requirements.

(b) A trainer is responsible for accurately reporting to the commission all grooms and assistant trainers in the trainer's employ. If a trainer releases any employee from employment, the trainer must notify the commission within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all grooms and assistant trainers in their employ are properly licensed by the commission.

(c) The industrial insurance premiums will be assessed based on each groom or assistant trainer employed in the coverage month, or a trainer may employ a "temporary groom" and be charged on a per day basis. The daily rate for a "temporary groom" will be prorated based on the number of days in the month. The use of a "temporary groom" for more than fourteen days in the calendar month will not be considered "temporary" and the trainer will be charged a full monthly premium. Premiums will be paid to the commission on a monthly basis. A trainer will be invoiced for the assessed industrial insurance premium for each licensed groom and licensed assistant trainer at the end of each month, or before the trainer leaves the grounds taking his/her horses. Multiple trainers may employ the same groom, but each trainer is responsible for the entire applicable labor and industries premium.

(3) Track employees.

(a) A trainer must pay the industrial insurance premiums for all track employees employed by the trainer to work on the grounds of a race track unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to track employees, which will include licensed exercise riders - track, and licensed pony riders - track, and excludes all grooms, spouse grooms, assistant trainers, and all farm employees working off the grounds of a Washington race track at a farm or training center.

(b) It is the trainer's responsibility to ensure all track employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover track employees will be assessed on the number of horses, per day, in a month a license trainer has horses on the grounds. The number of horses will include all horses on the grounds under the care of a licensed trainer, including pony horses. Premiums will be paid to the commission on a monthly basis. A trainer will be invoiced for the assessed industrial insurance premium for each horse per day at the end of each month, or before the trainer leaves the grounds taking his/her horses.

(i) A trainer is responsible for accurately reporting the correct number and identity of any horse or horses in their care. If the trainer cannot provide documentation of the exact date of a horse's arrival or departure, the trainer will be invoiced for any unreported horse beginning on the first day horses were allowed on the track for arrivals, or a day supported by other evidence acceptable to the commission.

(ii) Trainers involved in the transfer of any horse into or out of their care are jointly responsible to report the transfer to the commission. A transfer report supplied by the commission must be completed by both parties. Failure to report transfers may result in the previous trainer being assessed the industrial insurance premium for unreported transfers until the commission receives the required notice.

(4) Farm employees.

(a) To be covered under the horse racing industry labor and industries account, a licensed trainer must pay the industrial insurance premiums for all licensed farm employees employed by the trainer to work at a farm or training center unless exempted under reciprocal agreement outlined in subsection (5) of this section. Coverage will only apply to licensed farm employees which will include licensed exercise riders - farm, and licensed pony riders - farm, and excludes grooms, spouse grooms, assistant trainers, and all track employees working on the grounds of a Washington race track.

(b) A trainer is responsible for accurately reporting all farm employees in the trainer's employ. A trainer must notify the commission prior to any employee beginning work. If a trainer releases any farm employee from employment, the trainer must notify the stewards within forty-eight hours. Failure to notify the commission within forty-eight hours may result in the trainer being responsible for the full industrial insurance premium until notification is made. It is the trainer's responsibility to ensure all farm employees in their employ are properly licensed by the commission.

(c) The industrial insurance premiums to cover farm employees will be assessed on the number of employees, per day, multiplied by the number of days in the month the trainer reports the employee working. Trainers must report the anticipated work days and hours of work each day at the start of

the month. If the work schedule changes the trainer must immediately notify the commission.

(d) A farm employee may be required to produce to the commission payroll records for verification of work days and/or claims processing.

(5) Reciprocal agreements. The state of Washington has reciprocal agreements with other states. Trainers shipping in from these jurisdictions who have industrial insurance from a reciprocal state need not obtain industrial insurance coverage so long as they comply with the conditions of RCW 51.12.-120 and WAC 296-17-31009.

(6) Employees moving from one worksite to another.

(a) A licensed groom or licensed assistant trainer can move from the track to the farm or from the farm to the track. The trainer is not required to notify the commission whenever a licensed groom or licensed assistant trainer moves from the different worksites.

(b) A licensed exercise rider - track or licensed pony rider - track may not move from the track to the farm unless that person first obtains an exercise rider - farm or pony rider - farm license. On those days a track employee moves from the track to the farm, the trainer will be invoiced for, at the end of the month, an additional farm premium for each employee, for each day they worked at the farm as provided in subsection (4) of this section.

(c) A licensed exercise rider - farm or licensed pony rider - farm can move from the farm to the track. Before moving any such employees, the employee must first also be licensed as an exercise rider - track or pony rider - track. On those days a farm exercise rider or pony rider moves to the track, the trainer will not be responsible to pay any additional premium, as long as the employee continues to have the farm premium assessed. The licensed exercise rider - farm or licensed pony rider - farm, are only covered while performing the duties of their license for and under the direction of a licensed trainer.

(d) A track employee is only covered under the per horse, per day premium, and then only when performing the duties of their license for and under the direction of a licensed trainer while on the grounds of a Washington race track during its licensed race meet and periods of training. Any time prior to or after the stewards have authority on the grounds granted in WAC 260-24-510(2), the Washington track will be considered, for the purposes of industrial insurance coverage a farm or training center.

(7) Major track versus nonprofit race track.

(a) There is no distinction, for industrial insurance purposes, except as provided in (b) of this subsection, between a major (Class A or B) race track and a nonprofit (Class C) race track. Premiums to cover licensed employees will be assessed the same.

(b) License owners at a major race track will be assessed a premium of one hundred fifty dollars per year for one hundred percent ownership of one or more horses. Owners, with partial ownership interest shall be assessed a prorated amount of the full ownership fee in increments of ten percent. Owners at a nonprofit or Class C race track will continue to pay a lesser premium as established annually by the department of labor and industries.

(c) Premiums paid by owners are a fee to subsidize workers compensation coverage for injured workers. The premiums paid by owners do not extend any coverage to owners or their employees.

(8) Coverage outside the state of Washington.

(a) Trainers with employees from Washington may continue coverage when they are at another recognized race track in another state if that other jurisdiction has a reciprocal agreement with the state of Washington, and if:

(i) The trainer pays the premium for grooms and assistant trainers, and as long as both the trainer and grooms/assistant trainers are licensed by the commission; and

(ii) The trainer pays the premium at the farm rate for exercise riders - farm and pony riders - farm, and as long as both the trainer and all farm employees are licensed by the commission.

(b) Trainers must continue to report Washington employees to the commission prior to the start of each month so an assessment can be made. Failure to report may result in the trainer being referred to the stewards or executive secretary for further action.

(c) Track employees hired in another state or jurisdiction are not Washington employees. They are to be covered in the state or jurisdiction they were hired in. It is the trainer's responsibility to obtain coverage in the other state or jurisdiction.

(9) Trainers will be provided an invoice monthly of premiums due. The invoices will be prepared and mailed or delivered on or before the fifth day of the following month. Total monthly premiums ((~~will~~)) may be rounded to the next whole dollar. Payment of the premium is due prior to fifteen days from the date listed on the invoice. Trainers are responsible for the accuracy of their invoices and must report any errors or omissions to the commission prior to payment. Failure to make the payment by the fifteenth day will result in a fine, and if applicable a suspension as outlined in WAC 260-84-135.

WSR 19-22-095
PROPOSED RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)

[Admin #2019-02—Filed November 6, 2019, 9:53 a.m.]

Supplemental Notice to WSR 19-20-040.

Preproposal statement of inquiry was filed as WSR 19-16-142.

Title of Rule and Other Identifying Information: The following sections in chapter 182-30 WAC are revised: WAC 182-30-090 When may a subscriber change health plans? and 182-30-100 When may a subscriber enroll or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)?

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at https://www.hca.wa.gov/assets/program/Driving-parking-checkin-

instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 11, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by November 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA continues to develop rules to implement legislation that created the new school employees' benefits board (SEBB) program. The purpose of this proposal is to amend some of the special open enrollment (SOE) rules.

HCA originally filed this proposed rule making under WSR 19-20-040 and held a public hearing on November 5, 2019. As a result of a stakeholder comment, HCA revised *public school* in WAC 182-30-090 (2)(d) and 182-30-100 (3)(a)(xvi) to read as *public school district.* This is the only change that was made.

Making technical amendments to:

- Amend WAC 182-30-090 to add a new SOE that allows a subscriber who is changing employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon to be able to make new elections. Also adding a SOE that states if the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan;
- Amend WAC 182-30-100 to add a new SOE that allows a subscriber who is changing employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon they may be able to make new elections.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: ESSB 6241.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Parkman, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0883; Implementation: Barbara Scott, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0880; and Enforcement: Scott Palafox, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1858.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not apply to small businesses.

November 6, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-30-090 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for SEBB benefits. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms. The forms must be received no later than sixty days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon, which results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

(i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

(ii) The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

(iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (d) of this subsection special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(((~~(e)~~))) (f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan, otherwise there will be limited network providers and covered services;

Exception: A dental plan is considered available if a provider is available within 50 miles of the new address.

(((~~(f)~~))) (g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(((~~(g)~~))) (h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(((~~(h)~~))) (i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(((~~(i)~~))) (j) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-30-085(1);

(k) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(((~~(j)~~))) (l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a health plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-30-100 When may a school employee enroll or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP)? A school employee who is eligible to participate in the salary reduction plan as described in WAC 182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, DCAP, or both during the annual open enrollment by submitting the required forms to their SEBB organization, the HCA or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

Note: School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect both will only be enrolled in the HDHP with a HSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new elec-

tion under the premium payment plan, medical FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than sixty days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

• School employee has a change in marital status;

• School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility for the employer contribution toward their employer-based group health plan;

Exception: For the purposes of special open enrollment, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent becomes entitled to coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current health plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

• Active cancer treatment such as chemotherapy or radiation therapy;

• Treatment following a recent organ transplant;

• A scheduled surgery;

• Recent major surgery still within the postoperative period; or

• Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that straddles county lines or is in a county that borders Idaho or Oregon, which results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

• The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

• The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

• As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the subscriber is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

(b) **Medical FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

• School employee has a change in marital status;

• School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent becomes entitled to coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent becomes entitled to coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the

new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

WSR 19-22-096
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed November 6, 2019, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-19-013.

Title of Rule and Other Identifying Information: WAC 182-550-3830 Adjustments to inpatient rates and 182-550-7500 OPPS (outpatient prospective payment system) rates.

Hearing Location(s): On December 10, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 11, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 10, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by November 22, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is extending the date for rate enhancements for sole community hospitals from July 1, 2018, through June 30, 2021. During this time, the agency multiplies a hospital's specific conversion factor and per diem rates by 1.50. Starting July 1, 2021, the agency multiplies a hospital's specific conversion factor and per diem rates by 1.25.

Reasons Supporting Proposal: The agency is amending rules to align with ESHB 1109, section 211(14), 66th legislature, 2019 regular session.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Melissa Craig, P.O. Box 45505, Olympia, WA 98504-5505, 360-725-0938.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 6, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-09-022, filed 4/11/18, effective 5/12/18)

WAC 182-550-3830 Adjustments to inpatient rates. (1) The medicaid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

(a) Wage index adjustment;

(b) Direct graduate medical education (DGME); and

(c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

(7)(((~~(a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the criteria in this subsection.~~

~~(b)~~))) The agency considers an in-state hospital to qualify for ((~~the~~)) a rate enhancement if all of the following conditions apply. The hospital must:

(((~~(i)~~))) (a) Be certified by CMS as a sole community hospital as of January 1, 2013;

(((~~(ii)~~))) (b) Have a level III adult trauma service designation from the department of health as of January 1, 2014;

(((~~(iii)~~))) (c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011; ((~~and~~

~~(iv)~~))) (d) Be owned and operated by the state or a political subdivision((~~.~~

~~(v)~~)); and

(e) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

(8) If an in-state hospital qualifies for the rate enhancement in subsection (7) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.

(b) July 1, 2018, through June 30, 2021, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.50.

(c) July 1, 2021, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.

AMENDATORY SECTION (Amending WSR 18-16-059, filed 7/26/18, effective 8/26/18)

WAC 182-550-7500 OPPS rate. (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

(a) A base conversion factor established by the agency;

(b) An adjustment for direct graduate medical education (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its website.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

EAPG base rate × (.6(wage index) + .4)/(1-DGME)

(6) The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

(a) Be certified by CMS as a sole community hospital as of January 1, 2013.

(b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

(c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

(d) Be owned and operated by the state or a political subdivision.

(7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;

(b) July 1, 2018, through June 30, ((~~2019~~)) 2021, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;

(c) July 1, ((~~2019~~)) 2021, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.

(8) The formula for calculating a sole community hospital's final conversion factor is:

[EAPG base rate × (.6(wage index) + .4)/(1-DGME)] x SCH Factor

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 19-22-098
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed November 6, 2019, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-090.

Title of Rule and Other Identifying Information: The proposed rules update appliance standards in chapter 194-24 WAC.

Hearing Location(s): On December 16, 2019, at 2:00 p.m., at the Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98501.

Date of Intended Adoption: December 18, 2019.

Submit Written Comments to: Sarah Vorpahl, Washington Department of Commerce, P.O. Box 42525, Olympia, WA 98504, email appliances@commerce.wa.gov, by December 16, 2019.

Assistance for Persons with Disabilities: Contact Austin Scharff, email austin.scharff@commerce.wa.gov, by December 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates chapter 194-24 WAC and includes seventeen product standards, four existing standards and thirteen new standards. Most standards take effect on January 1, 2021. The effective dates of standards in this legislation are based on date of manufacture, not the date of sale. Products already in stores or warehouses may be installed after the new standards take effect. The standards apply to manufacturers, distributors, retailers, and installers, rather than to individual consumers.

Reasons Supporting Proposal: The proposed rules implement statutory change to our existing state standards. These standards represent a cost-effective strategy to protect consumers and businesses and strengthen the state's economy. Efficient products save energy and water, reduce long-term operating costs, and cut greenhouse gas emissions.

Statutory Authority for Adoption: RCW 194.260.070 [19.260.070].

Statute Being Implemented: Chapter 19.260 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Rule-making activity will continue under WSR 19-15-090 as the agency develops rules to implement chapter 19.260 RCW.

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Sarah Vorpahl, Ph.D., 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-725-3120; Implementation and Enforcement: Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department of commerce.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules implement statutory requirements and do not impose costs beyond what is required to comply with the statute. According to the appliance standards awareness project, these products represent a net cost savings of nearly $2 billion to consumers and businesses in Washington in the first fifteen years of being enacted. Ref: https://appliance-standards.org/sites/default/files/States%20Go%20First.pdf.

November 6, 2019
S. Coggins
Legislative Coordinator

Chapter 194-24 WAC

APPLIANCE ((~~ENERGY EFFICIENCY~~)) STANDARDS

AMENDATORY SECTION (Amending WSR 07-14-092, filed 6/29/07, effective 7/30/07)

WAC 194-24-020 Purpose and scope. The purpose of these rules is to establish efficiency standards and design requirements for certain products sold or installed in the state assuring consumers and businesses that such products meet minimum efficiency performance levels thus saving energy and money on utility bills. This chapter applies ((~~equally~~)) to products ((~~regardless of whether they are sold, offered for sale, or~~)) sold or offered for sale, lease, or rent in the state, except those sold wholesale in Washington for final retail sale outside the state and those designed and sold exclusively for use in recreational vehicles, or other mobile equipment. The standards and design requirements apply regardless of whether the product is installed as a stand-alone product or as a component of another product.

AMENDATORY SECTION (Amending WSR 07-14-092, filed 6/29/07, effective 7/30/07)

WAC 194-24-030 Definitions. ((~~The following words and terms have the following meanings for the purposes of this chapter unless otherwise indicated:~~

~~(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.~~

~~(2) "Ballast" means a device used with an electric discharge lamp to obtain necessary circuit conditions, such as voltage, current, and waveform, for starting and operating the lamp.~~

~~(3)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that:~~

~~(i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and~~

~~(ii) May be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.~~

~~(b) "Commercial refrigerators and freezers" does not include:~~

~~(i) Products with 85 cubic feet or more of internal volume;~~

~~(ii) Walk-in refrigerators or freezers;~~

~~(iii) Consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.;~~

~~(iv) Products without doors; or~~

~~(v) Freezers specifically designed for ice cream.~~

~~(4) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.~~

~~(5) "Department" means the department of community, trade, and economic development.~~

~~(6) "High-intensity discharge lamp" means a lamp in which light is produced by the passage of an electric current through a vapor or gas, and in which the light-producing arc is stabilized by bulb wall temperature and the arc tube has a bulb wall loading in excess of three watts per square centimeter.~~

~~(7) "Metal halide lamp" means a high-intensity discharge lamp in which the major portion of the light is produced by radiation of metal halides and their products of dissociation, possibly in combination with metallic vapors.~~

~~(8) "Metal halide lamp fixture" means a light fixture designed to be operated with a metal halide lamp and a ballast for a metal halide lamp.~~

~~(9) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.~~

~~(10) "Probe-start metal halide ballast" means a ballast used to operate metal halide lamps which does not contain an igniter and which instead starts lamps by using a third starting electrode "probe" in the arc tube.~~

~~(11) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.~~

~~(12)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.~~

~~(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.~~

~~(13)(a) "Single-voltage external AC to DC power supply" means a device that:~~

~~(i) Is designed to convert line voltage alternating current input into lower voltage direct current output;~~

~~(ii) Is able to convert to only one DC output voltage at a time;~~

~~(iii) Is sold with, or intended to be used with, a separate end-use product that constitutes the primary power load;~~

~~(iv) Is contained within a separate physical enclosure from the end-use product;~~

~~(v) Is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and~~

~~(vi) Has a nameplate output power less than or equal to 250 watts.~~

~~(b) "Single-voltage external AC to DC power supply" does not include:~~

~~(i) Products with batteries or battery packs that physically attach directly to the power supply unit;~~

~~(ii) Products with a battery chemistry or type selector switch and indicator light; or~~

~~(iii) Products with a battery chemistry or type selector switch and a state of charge meter.~~

~~(14) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, that has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, and a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and that falls into one of the following categories:~~

~~(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches;~~

~~(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.~~

~~(15)(a) "Unit heater" means a self-contained, vented fan-type commercial space heater that uses natural gas or propane, and that is designed to be installed without ducts within a heated space.~~

~~(b) "Unit heater" does not include any products covered by federal standards established pursuant to 42 U.S.C. Sec. 6291 et seq., or any product that is a direct vent, forced flue heater with a sealed combustion burner.~~)) The definitions in chapter 19.260 RCW apply throughout this chapter.

(1) The following terms have the same meaning as used in the California Rule:

(a) Showerheads;

(b) Tub spout diverters;

(c) Showerhead tub spout diverter combinations;

(d) Lavatory faucets and replacement aerators;

(e) Kitchen faucets and replacement aerators;

(f) Public lavatory faucets and replacement aerators;

(g) Urinals;

(h) Water closets; and

(i) Computers and computer monitors.

(2) "California Rule" means Title 20, Article 4, California Code of Regulations, in effect on January 2019, revised September 2019.

(3) "MAEDbS" means the modernized appliance efficiency database system established pursuant to section 1606 (c) of the California Rule and maintained by the California energy commission.

AMENDATORY SECTION (Amending WSR 07-14-092, filed 6/29/07, effective 7/30/07)

WAC 194-24-070 Penalties for noncompliance. ((~~The energy policy division shall investigate complaints received~~

~~concerning violations of these rules. Any manufacturer or distributor who violates this chapter shall be issued a warning by the director of the department for any first violation. Repeat violations are subject to a civil penalty of not more than two hundred fifty dollars per day.~~)) In applying the penalty provision in RCW 19.260.070(6), the department may consider each unit of a noncompliant product to be a separate violation.

NEW SECTION

WAC 194-24-100 Residential pool pumps. (1) **Scope.** This rule applies to new residential pool pumps manufactured on or after January 1, 2010, and installed for compensation in the state on or after January 1, 2011.

(2) **Standard.** Through July 18, 2021, residential pool pumps must meet requirements specified in California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009. Beginning July 19, 2021, residential pool pumps must meet requirements specified in the dedicated-purpose pool pump rule published by the United States Department of Energy on January 18, 2017, (82 Fed. Reg. 5650) and effective on May 18, 2017.

(3) **Testing.** Through July 18, 2021, residential pool pumps must meet the test criteria as measured in accordance with California Code of Regulations, Title 20, section 1604 in effect as of February 5, 2018. Beginning July 19, 2021, residential pool pumps must meet the test criteria specified in the dedicated-purpose pool pump rule published by the United States Department of Energy on January 18, 2017, (82 Fed. Reg. 5650) and effective on May 18, 2017.

(4) **Listing.** Through July 18, 2021, each manufacturer must cause to be listed each residential pool pump, by model number, in MAEDbS.

(5) **Marking.** Through July 18, 2021, every unit of every residential pool pump must comply with the requirements of California Code of Regulations, Title 20, section 1607 in effect as of July 26, 2009.

NEW SECTION

WAC 194-24-105 Portable electric spas. (1) **Scope.** This rule applies to new portable electric spas manufactured on or after January 1, 2010, and installed for compensation in the state on or after January 1, 2011.

(2) **Standard.** Portable electric spas must meet the requirements of the American National Standard for portable electric spa energy efficiency (ANSI/APSP/ICC-14 2014).

(3) **Testing.** Portable electric spas must be tested in accordance with the method specified in the American National Standard for portable electric spa energy efficiency (ANSI/APSP/ICC-14 2014).

(4) **Listing.** Each manufacturer must cause to be listed each portable electric spa, by model number, in MAEDbS.

(5) **Marking.** Every unit of every portable electric spa must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-110 Tub spout diverters. (1) **Scope.** This rule applies to new tub spout diverters manufactured on or after January 1, 2010, and installed for compensation in the state on or after January 1, 2011.

(2) **Standard.** Tub spout diverters that are within the scope and definition of the applicable regulation must meet the requirements in the California Rule, section 1605.3.

(3) **Testing.** Tub spout diverters must meet the testing criteria as measured in accordance with the test methods prescribed in the California Rule, section 1604.

(4) **Listing.** Each manufacturer must cause to be listed each tub spout diverter, by model number, in MAEDbS.

(5) **Marking.** Every unit of every tub spout diverter must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-115 Commercial hot food holding cabinets. (1) **Scope.** This rule applies to new commercial hot food holding cabinets manufactured on or after January 1, 2010, and installed for compensation in the state on or after January 1, 2011.

(2) **Standard.** The idle energy rate of commercial hot food holding cabinets shall be no greater than 40 watts per cubic foot of measured interior volume.

(3) **Testing.** The idle energy rate of commercial hot food holding cabinets shall be determined using ANSI/ASTM F2140-11 standard test method for the performance of hot food holding cabinets (test for idle energy rate dry test). Commercial hot food holding cabinet interior volume shall be calculated using straight line segments following the gross interior dimensions of the appliance and using the following equation: Interior height × interior width × interior depth. Interior volume shall not account for racks, air plenums, or other interior parts.

(4) **Listing.** Each manufacturer must cause to be listed each commercial hot food holding cabinet, by model number, in MAEDbS.

(5) **Marking.** Every unit of every commercial hot food holding cabinet must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-120 Commercial dishwashers. (1) **Scope.** This rule applies to new commercial dishwashers manufactured on or after January 1, 2021.

(2) **Standard.** Commercial dishwashers must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial dishwashers, version 2.0.

(3) **Testing.** Commercial dishwashers must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial dishwashers, version 2.0.

(4) **Listing.** Each manufacturer must cause to be listed each commercial dishwasher, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every commercial dishwasher must have an ENERGY STAR® label.

NEW SECTION

WAC 194-24-125 Commercial fryers. (1) **Scope.** This rule applies to new commercial fryers manufactured on or after January 1, 2021.

(2) **Standard.** Commercial fryers must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial fryers, version 2.0.

(3) **Testing.** Commercial fryers must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial fryers, version 2.0.

(4) **Listing.** Each manufacturer must cause to be listed each commercial fryer, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every commercial fryer must have an ENERGY STAR® label.

NEW SECTION

WAC 194-24-130 Commercial steam cookers. (1) **Scope.** This rule applies to new commercial steam cookers manufactured on or after January 1, 2021.

(2) **Standard.** Commercial steam cookers must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial steam cookers, version 1.2.

(3) **Testing.** Commercial steam cookers must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial steam cookers, version 1.2.

(4) **Listing.** Each manufacturer must cause to be listed each commercial steam cooker, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every commercial steam cooker must have an ENERGY STAR® label.

NEW SECTION

WAC 194-24-135 Computers and computer monitors. (1) **Scope.** This rule applies to new computers and computer monitors manufactured on or after January 1, 2021.

(2) **Standard.** Computers and computer monitors must meet the requirements of section 1605.3(v) of the California Rule.

(3) **Testing.** Computers and computer monitors must meet the testing requirements of section 1603 of the California Rule as measured in accordance with the test methods prescribed in section 1604(v) of the California Rule.

(4) **Listing.** Each manufacturer must cause to be listed each computer and computer monitor, by model number, in MAEDbS.

(5) **Marking.** Every unit of every computer and computer monitor must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-140 Faucets. (1) **Scope.** This rule applies to new faucets manufactured on or after January 1, 2021.

(2) **Standard.** The following products that are within the scope and definition of the applicable regulation must meet the requirements in the California Rule, section 1605.3:

(a) Lavatory faucets and replacement aerators;

(b) Kitchen faucets and replacement aerators;

(c) Public lavatory faucets and replacement aerators.

(3) **Testing.** Faucets must meet the testing criteria as measured in accordance with the test methods prescribed in the California Rule, section 1604.

(4) **Listing.** Each manufacturer must cause to be listed each faucet, by model number, in MAEDbS.

(5) **Marking.** Every unit of every faucet must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-145 High color rendering index (CRI) fluorescent lamps. (1) **Scope.** This rule applies to new high CRI fluorescent lamps manufactured on or after January 1, 2023.

(2) **Standard.** High CRI fluorescent lamps must meet the requirements in 10 C.F.R. Sec. 430.32 (n)(4) in effect as of January 3, 2017.

(3) **Testing.** High CRI fluorescent lamps must meet the testing criteria as measured in accordance with the test methods prescribed in 10 C.F.R. Sec. 430.23 (appendix R to subpart B of part 430) in effect as of January 3, 2017.

(4) **Listing.** There is no listing requirement for this product.

(5) **Marking.** Every unit of every high CRI fluorescent lamp must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-150 Residential ventilating fans. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2021.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 3.2.

(4) **Listing.** Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every residential ventilating fan must have an ENERGY STAR® label.

NEW SECTION

WAC 194-24-155 Showerheads. (1) **Scope.** This rule applies to new showerheads manufactured on or after January 1, 2021.

(2) **Standard.** Showerheads that are within the scope and definition of the applicable regulation must meet the requirements in the California Rule, section 1605.3.

(3) **Testing.** Showerheads must meet the testing criteria as measured in accordance with the test methods prescribed in the California Rule, section 1604.

(4) **Listing.** Each manufacturer must cause to be listed each showerhead, by model number, in MAEDbS.

(5) **Marking.** Every unit of every showerhead must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-160 Spray sprinkler bodies. (1) **Scope.** This rule applies to new spray sprinkler bodies manufactured on or after January 1, 2021.

(2) **Standard.** Spray sprinkler bodies that are not specifically excluded from the scope of the Environmental Protection Agency WaterSense program product specification for spray sprinkler bodies, version 1.0, must include an integral pressure regulator and must meet the water efficiency and performance criteria and other requirements of that specification.

(3) **Testing.** Spray sprinkler bodies that are not specifically excluded from the scope of the Environmental Protection Agency WaterSense program product specification for spray sprinkler bodies, version 1.0, must include an integral pressure regulator and must meet the water efficiency and performance criteria and other requirements of that specification.

(4) **Listing.** Each manufacturer must cause to be listed each spray sprinkler body, by model number, in the WaterSense product database.

(5) **Marking.** Every unit of every spray sprinkler body product package must have a WaterSense label.

NEW SECTION

WAC 194-24-165 Urinals. (1) **Scope.** This rule applies to new urinals manufactured on or after January 1, 2021.

(2) **Standard.** Urinals that are within the scope and definition of the applicable regulation must meet the requirements in the California Rule, section 1605.3.

(3) **Testing.** Urinals must meet the testing criteria as measured in accordance with the test methods prescribed in the California Rule, section 1604.

(4) **Listing.** Each manufacturer must cause to be listed each urinal, by model number, in MAEDbS.

(5) **Marking.** Every unit of every urinal must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-170 Water closets. (1) **Scope.** This rule applies to new water closets manufactured on or after January 1, 2021.

(2) **Standard.** Water closets that are within the scope and definition of the applicable regulation must meet the requirements in the California Rule, section 1605.3.

(3) **Testing.** Water closets must meet the testing criteria as measured in accordance with the test methods prescribed in the California Rule, section 1604.

(4) **Listing.** Each manufacturer must cause to be listed each water closet, by model number, in MAEDbS.

(5) **Marking.** Every unit of every water closet must comply with the requirements of section 1607 of the California Rule.

NEW SECTION

WAC 194-24-175 Water coolers. (1) **Scope.** This rule applies to new water coolers manufactured on or after January 1, 2021.

(2) **Standard.** Water coolers included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for water coolers, version 2.0 must have an on mode with no water draw energy consumption less than or equal to the following values:

(a) 0.16 kilowatt-hours per day for cold-only units and cook and cold units;

(b) 0.87 kilowatt-hours per day for storage type hot and cold units; and

(c) 0.18 kilowatt-hours per day for on demand hot and cold units.

(3) **Testing.** Water coolers must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for water coolers, version 2.0.

(4) **Listing.** Each manufacturer must cause to be listed each water cooler, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every water cooler must have an ENERGY STAR® label.

NEW SECTION

WAC 194-24-180 Electric storage water heaters. (1) **Scope.** This rule applies to new electric storage water heaters manufactured on or after January 1, 2021. The effective date of the rule is suspended until January 1, 2022, for electric storage water heaters other than heat pump type water heaters.

(2) **Standard.** Electric storage water heaters must have a modular demand response communications port compliant with:

(a) The March 2018 version of the ANSI/CTA-2045-A communication interface standard, or a standard determined by the department to be equivalent; and

(b) The March 2018 version of the ANSI/CTA-2045-A application layer requirements.

The interface standard and application layer requirements required in this subsection are the versions established in March 2018.

(3) Upon written request by a manufacturer, the department will determine whether an alternative communications port and communication interface standard are equivalent for the purposes of subsection (2) of this section.

(a) Any requested alternative must use a standard that is open and widely available and must provide the demand

response functions provided using the standards identified in subsection (2) of this section.

(b) A request for designation of a standard must provide technical documentation demonstrating that the standard satisfies the requirements in (a) of this subsection and must describe any industry or stakeholder process used in developing the standard. The department will provide reasonable opportunity for input by utilities, manufacturers, technical experts and other interested stakeholders prior to determining whether the proposed standard is equivalent. The department will make available on a publicly accessible website any standard that it determines to be equivalent.

(4) **Testing.** There is no test method required for this product.

(5) **Listing.** There is no listing requirement for this product.

(6) **Marking.** Every unit of every electric storage water heater must have a label or marking indicating compliance with the standard in this section. The format and content of the label or marking must be approved in advance by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 194-24-040	Implementation dates, end dates, and applicability.
WAC 194-24-050	Labeling.
WAC 194-24-060	Testing and certification.

WSR 19-22-099
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 6, 2019, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-023.

Title of Rule and Other Identifying Information: WAC 260-20-090 Association security.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461 [360-459-6461], by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds language to require licensees to cooperate with association security in a respectful manner.

Reasons Supporting Proposal: Association security personnel are not considered racing officials and perform functions to keep the grounds safe. Language was needed to ensure the commission may support their efforts.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 6, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-07-042, filed 3/15/13, effective 4/15/13)

WAC 260-20-090 Association security. (1) A racing association conducting a race meet must maintain security controls over its grounds.

(2) An association will prevent access to, and will remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

(3) Class A or B racing associations must provide continuous security in the stable area during all times that horses are stabled on the grounds. An association will require any person entering the stable area to display a valid license or credential issued by the commission or a pass issued by the association.

(4) Class A or B racing associations must keep a written record, on a form approved by the commission, of all horses admitted to or leaving the stable areas. For horses admitted to the stable areas the log must contain the date, time, names of horses, and barn or name of trainer they are being delivered to. For horses leaving the stable areas the log must contain the date, time, name of horses, and barn or name of trainer they are leaving from. A copy of the completed form(s) must be provided to the commission on a weekly basis. The original log is subject to inspection at any time by the commission.

(5) All persons and businesses transporting horses on and off the grounds of a racing association are responsible to provide association security, and if applicable, the commission with the names of any horses delivered to or leaving the grounds and the trainer responsible.

(6) Class A or B racing associations must keep a written record of all individuals admitted to the stable area between the hours of 12:00 midnight and 4:00 a.m. At a minimum the record shall contain the name of the person admitted, the person's license numbers and the time admitted.

(7) Class A or B racing associations must provide fencing around the stable area in a manner that is approved by the commission.

(8) Not later than twenty-four hours after an incident occurs requiring the attention of security personnel, the chief of security must deliver to commission security a written report describing the incident, which may be forwarded to the stewards for disciplinary action. The report must include the name of each individual involved in the incident and the circumstances of the incident.

(9) Licensees will cooperate and follow association security personnel's direction in a respectful manner and will not use profane or inappropriate language toward association security employees.

WSR 19-22-100
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 6, 2019, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-12-081.

Title of Rule and Other Identifying Information: Changing the basic skills assessment requirement from "passing" to "taking" the test. Expansion of basic skills assessment options for both in- and out-of-state candidates. Changes are the result of legislative changes.

Hearing Location(s): On January 17, 2020, at 8:30 a.m., at the Hilton Garden Inn, 2101 Henderson Park Lane S.E., Olympia, WA 98501.

Date of Intended Adoption: January 17, 2020.

Submit Written Comments to: The Professional Educator Standards Board (PESB), 600 Washington Street S.E., Room 400, Olympia, WA 98504, email pesb@k12.wa.us, by January 13, 2020.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email rulespesb@k12.wa.us, by January 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to implement recent legislative changes regarding basic skills assessment.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Jisu Ryu, 600 Washington Street S.E., Olympia, 98504, 360-725-6275; Implementation and Enforcement: PESB, 600 Washington Street S.E., Olympia, 98504, 360-725-6275.

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

A cost-benefit analysis is not required under RCW 34.05.328. The probable benefits of the rule are greater than its probable cost.

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

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

November 4, 2019
Justin Montermini
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-051, filed 8/1/13, effective 9/1/13)

WAC 181-01-001 WEST-B extension. Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 ((~~(1)(b)~~)) or 181-79A-260 have up to one calendar year from issuance of temporary permit to ((~~pass~~)) take the WEST-B basic skills ((~~test or~~)) assessment and report the individual results; present evidence of ((~~passing~~)) taking an alternative ((~~assessment per WAC 181-01-0025,~~)) or equivalent assessment per WAC 181-01-002, provided that they have completed all other requirements for ((~~residency~~)) teacher certification other than ((~~passage of~~)) the WEST-B requirement and are thus eligible for a temporary permit under WAC 181-79A-128.

AMENDATORY SECTION (Amending WSR 15-08-030, filed 3/25/15, effective 4/25/15)

WAC 181-01-002 WEST-B exemptions, alternatives, and equivalent assessments. (1) ((~~Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260, or out-of-state candidates applying to masters level/post-baccalaureate teacher preparation programs in the state of Washington, in lieu of passing the WEST-B, may present evidence of passing an alternative assessment per WAC 181-01-0025, or may provide official documentation of scores on equivalent skills tests as approved and published by the professional educator standards board. A candidate may substitute a passing score on one or more sections of skills tests approved by the board as equivalent passing score on the WEST-B.~~)) Individuals seeking admission to a state approved teacher preparation program, and out-of-state candidates applying for a Washington state teacher certificate under WAC 181-79A-257 or 181-79A-260, must submit evidence of taking the WEST-B or an alternative or equivalent to the WEST-B as identified and accepted by the professional educator standards board. Individuals may not receive a teacher certificate without taking a basic skills assessment under this section.

(2) Candidates applying for a Washington state ((~~residency or professional~~)) teaching certificate under WAC 181-79A-257 ((~~(1)(b)~~)) who hold a valid certificate through the National Board for Professional Teaching Standards or other equivalent second tier educator certifications from other

states as approved and published by the professional educator standards board, are exempt from the WEST-B requirement.

AMENDATORY SECTION (Amending WSR 07-09-058, filed 4/12/07, effective 5/13/07)

WAC 181-01-004 ((~~Appeals~~)) Case-by-case exception process. (1) The Washington professional educator standards board may permit exceptions from the basic skills and content knowledge assessment requirements under RCW 28A.410.220 (1) and (2) on a case-by-case basis.

(2) Consistent with the discretion accorded to the professional educator standards board in RCW 28A.410.220((~~(3)~~)) (4), the alternative assessments, equivalent assessments, exemptions and extensions provided for in WAC 181-01-001, 181-01-002, 181-02-001 and 181-02-002, shall be the sole exceptions to the WEST-B and WEST-E assessment requirements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-01-0025 WEST-B alternatives.

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-300 Educator preparation program provider requirements ((~~for teacher candidates~~)). In addition to the general program standards and expectations established in WAC 181-78A-220 and 181-78A-231 through 181-78A-237, providers shall comply with the following:

(1) Field placement. The board will publish minimum field placement and clinical experience requirements for all roles. Providers must establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement. Each field placement agreement shall require, but not be limited to:

(a) Fingerprint and character clearance under RCW 28A.410.010 is current at all times during the field experience for candidates who do not hold a valid Washington certificate;

(b) Assurance that programs shall ensure candidates are placed in settings where they can be objectively evaluated;

(c) Specified qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(d) Assurances related to the provision of mentors, including:

(i) Mentors are instructional leaders identified collaboratively with the partner school or district;

(ii) Mentors and principals are provided with a set of internship expectations;

(iii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iv) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising.

(e) Providers must describe in writing the duties and responsibilities of site supervisors and mentors and the anticipated length and nature of the field experience;

(f) Teacher preparation programs.

(i) A provider of a teacher education program must administer the teacher performance assessment adopted by the board to all candidates in a residency certificate program.

(ii) Clinical practice for teacher candidates should consist of no less than four hundred fifty hours in classrooms settings.

(g) Administrator preparation programs.

(i) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(ii) A provider of a principal preparation program shall require for those persons beginning their internship August 1, 2016, and after, an internship which requires practice as an intern for five hundred forty hours, of which at least one-half shall be during school hours, when students and/or staff are present, and for the duration of a full school year. A "full school year" shall mean at least the majority of an academic year: Provided further, that a provider of a principal preparation program shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-220.

(iii) A provider of a superintendent preparation program shall require an internship of at least three hundred sixty hours.

(2) Assessment requirements for providers of teacher preparation programs.

(a) A provider of a teacher preparation program must assure that all candidates entering the program have successfully ((~~passed~~)) met the WEST B ((~~or its alternative or exemptions per~~)) requirement under chapter 181-01 WAC at the time of admission. ((~~The candidate must take and pass the WEST-B, or provide evidence of meeting an alternative or exception at the time of admissions. Candidates admitted to a residency teacher preparation program prior to passage of the WEST-B or its approved alternative or exemptions must pass the WEST-B prior to student teaching.~~)) The provider must collect and hold evidence of candidates meeting this requirement.

(b) A provider of a teacher preparation program shall assure that the candidate has successfully attempted at least one WEST E or equivalent content assessment test per chapter 181-02 WAC prior to placing a teacher candidate in a student teaching role with a district. The provider must collect and hold evidence of candidates meeting this requirement.

(c) Teacher evaluation. Teacher preparation program providers shall require candidates for a residency certificate to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements.

(d) Performance assessment. Teacher preparation program providers shall require that each candidate engage in a performance assessment process approved by the board. All candidates shall exit the residency certificate program with a professional growth plan.

(3) Required since time immemorial curriculum integration.

(a) There shall be a one quarter or semester course in either Washington state history and government, or Pacific Northwest history and government in the curriculum of all teacher preparation programs.

(b) No person shall be completed from any of said programs without completing said course of study, unless otherwise determined by the Washington professional educator standards board.

(c) Any course in Washington state or Pacific Northwest history and government used to fulfill the requirement of this section shall include information on the culture, history, and government of the American Indian peoples who were the first human inhabitants of the state and the region.

(d) Teacher preparation program providers shall ensure that programs meet the requirements of this section by integrating the curriculum developed and made available free of charge by the office of the superintendent of curriculum developed and made available free of charge by the office of the superintendent of public instruction into existing programs or courses and may modify that curriculum in order to incorporate elements that have a regionally specific focus.

(4) Principal preparation programs.

(a) A provider of a principal preparation program must require candidates to demonstrate knowledge of teacher evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice teacher evaluation skills.

(b) Performance assessment. All candidates shall exit the preparation program with a professional growth plan.

(5) Professional education advisory board.

(a) All educator preparation program providers shall establish and maintain a professional education advisory board to participate in and cooperate with the organization on decisions related to the development, implementation, and revision of preparation program(s).

(b) The professional education advisory board has adopted operating procedures and has met at least three times a year.

(c) The professional education advisory board annually shall review and analyze data for the purposes of determining whether candidates have a positive impact on student learning and providing the institution with recommendations for programmatic change. This data may include, but not be limited to: Student surveys, follow-up studies, employment placement records, student performance portfolios, course evaluations, program review indicators, and summaries of performance on the pedagogy assessment for teacher candidates.

(d) The professional education advisory board shall make recommendations when appropriate for program changes to the institution which must in turn consider and respond to the recommendations in writing in a timely fashion.

(6) This section shall be in effect beginning September 1, 2017.

WSR 19-22-101
PROPOSED RULES
PARAEDUCATOR BOARD
[Filed November 6, 2019, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-066.

Title of Rule and Other Identifying Information: WAC 179-05-025.

Hearing Location(s): On January 15, 2020, at 8:30 a.m., at the Hilton Garden Inn, 2101 Henderson Park Lane S.E., Olympia, WA 98501.

Date of Intended Adoption: January 15, 2020.

Submit Written Comments to: The Professional Educator Standards Board (PESB), 600 Washington Street S.E., Room 400, Olympia, WA 98504, email pesb@k12.wa.us, by January 13, 2020.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email rulespesb@k12.wa.us, by January 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to add a new section to WAC language that clearly outlines the required dates in which the legislatively created paraeducator certificate program must begin.

Reasons Supporting Proposal: To clarify legislative intent in establishing a clear start date for the required paraeducator certificate program and its associated trainings.

Statutory Authority for Adoption: Chapters 28A.413, 28A.410 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275; Implementation and Enforcement: Paraeducator Board, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275.

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

A cost-benefit analysis is not required under RCW 34.05.328. The probable benefits of the rule are greater than its probable costs.

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

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

November 6, 2019
Justin Montermini
Rules Coordinator

NEW SECTION

WAC 179-05-025 Start date of the paraeducator certificate program. (1) Beginning July 1, 2019, districts, or providers, may train educators on the paraeducator certificate program. Training provided before July 1, 2019, will not

count towards completing continuing education credit hours of the paraeducator certificate program.

(2) The general paraeducator certificate may be attained with continuing education credit hours that were completed after July 1, 2019, and within five years prior to the date of application.

WSR 19-22-102
PROPOSED RULES
PARAEDUCATOR BOARD

[Filed November 6, 2019, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-13-069.

Title of Rule and Other Identifying Information: WAC 179-07-040 Knowledge and skill competencies for the standards of practice.

Hearing Location(s): On January 15, 2020, at 8:30 a.m., at the Hilton Garden Inn, 2101 Henderson Park Lane S.E., Olympia, WA 98501.

Date of Intended Adoption: January 15, 2020.

Submit Written Comments to: The Professional Educator Standards Board (PESB), 600 Washington Street S.E., Room 400, Olympia, WA 98504, email pesb@k12.wa.us, by January 13, 2020.

Assistance for Persons with Disabilities: Contact PESB, phone 360-725-6275, email rulespesb@k12.wa.us, by January 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal is to update the social and emotional learning standards associated with state designed and required paraeducator standards of practice.

Reasons Supporting Proposal: Adding updated social and emotional learning standards into the current standards of practice for paraeducators will ensure closer adherence to best practice in implementing these standards throughout the paraeducator workforce.

Statutory Authority for Adoption: Chapters 28A.413, 28A.410 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Busbee, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275; Implementation and Enforcement: Paraeducator Board, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6275.

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

A cost-benefit analysis is not required under RCW 34.05.328. The probable benefits of the rule are greater than its probable costs.

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

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

November 6, 2019
Justin Montermini
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-16-105, filed 7/31/18, effective 8/31/18)

WAC 179-07-040 Knowledge and skill competencies for the standards of practice. The knowledge and skill competencies describe the standards of practice that paraeducators should exhibit when working with students. Competencies are associated with each standard.

(1) Supporting instructional opportunities:

(a) Knowledge competencies:

(i) Proficiency in basic reading, writing, and math skills;

(ii) Knowledge of basic computer applications (e.g., word processing, presentation, and spreadsheet applications), data collection, assessments and software applications to support K-12 education; and

(iii) Knowledge of one's own cultural identity and how it influences perceptions, values, and practices.

(b) Skill competencies:

(i) Demonstrate ability to assist in reviewing, preparing, delivering, and reinforcing district/school/classroom instructional outcomes (e.g., tutoring, individual and small group instruction) as directed by certificated/licensed staff;

(ii) Demonstrate ability to assist in recording and maintaining data as directed by certificated/licensed staff;

(iii) Demonstrate ability to assist in administration of assessments and monitoring student progress as directed by certificated/licensed staff; and

(iv) Demonstrate ability to utilize technology to support educational and safety outcomes as directed by certificated/licensed staff.

(2) Demonstrating professionalism and ethical practices:

(a) Knowledge competencies:

(i) Knowledge of the code of professional conduct for education and applicable district policies and procedures;

(ii) Knowledge of the distinctions in the roles and responsibilities of teachers, paraeducators, administrators, families, and other team members;

(iii) Knowledge of the need to protect civil and human rights pertaining to all students, families, and staff; and

(iv) Knowledge of the importance and purpose of confidentiality of student information.

(b) Skill competencies:

(i) Adhere to code of professional conduct and applicable district policies and procedures;

(ii) Pursue and participate in staff professional development and learning opportunities;

(iii) Adhere to and follow district's mission, policies, procedures, and personnel practices; and

(iv) Adhere to confidentiality as consistent with all applicable laws, regulations, policies, and procedures.

(3) Supporting a positive and safe learning environment:

(a) Knowledge competencies:

(i) Knowledge of child and adolescent developmental milestones/stages and potential early warning indicators (e.g., attendance, behavior, and academic progress);

(ii) Knowledge of strategies to create an equitable learning environment which fosters unique strengths and abilities of students being served; ((~~and~~))

(iii) Knowledge of behavioral support systems/strategies that create inclusive and safe learning environments; and

(iv) Knowledge of how to consider the well-being of others and a desire to contribute and support students, school, and community.

(b) Skill competencies:

(i) Demonstrate ability to assist students at appropriate developmental stages and report student concerns or risk factors to certificated staff or supervisor;

(ii) Demonstrate ability to implement behavior support systems/strategies as directed by certificated staff or supervisor;

(iii) Adhere to district prescribed health, safety, and emergency policies and school guidelines; ((~~and~~))

(iv) Demonstrate ability to follow and assist in monitoring career and technical education (CTE) program/class safety procedures as directed by district and/or instructor;

(v) Demonstrate an awareness of student emotion, and the skill to help direct and express a student's emotions, thoughts, impulses, and stress in constructive ways;

(vi) Demonstrate the ability to assist students to access family, school, and community resources of support; and

(vii) Demonstrate the ability to assist in the development of a student's sense of social and community responsibility.

(4) Communicating effectively and participating in the team process:

(a) Knowledge competencies:

(i) Knowledge of how multiple communication methods contribute to collaborative team work;

(ii) Knowledge of collaborative team strategies and decision making;

(iii) Knowledge of the need to respect individual differences among all students, families, and staff; and

(iv) Knowledge of the importance of giving and receiving feedback regarding student learning and/or personal performance.

(b) Skill competencies:

(i) Demonstrate ability to utilize various communication methods, problem solving skills, and collaboration strategies with staff, students, families and community;

(ii) Demonstrate ability to initiate and provide relevant feedback regarding job duties, performance tasks, and student learning outcomes; and

(iii) Demonstrate ability to apply feedback regarding student learning outcomes and/or personal performance.

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

(a) Knowledge competencies:

(i) Knowledge of and respect for different ethnic, cultural, abilities, and linguistic backgrounds of students, families, staff, and community being served;

(ii) Knowledge of strategies to support and maintain a culturally inclusive learning environment; and

(iii) Knowledge of student cultural histories and contexts, as well as family norms and values in different cultures.

(b) Skill competencies:

(i) Demonstrate ability to assist in implementing educational material which represents and supports various cultures and abilities of students being served as directed by certificated/licensed staff; and

(ii) Demonstrate ability to foster a culturally inclusive environment as directed by certificated/licensed staff or supervisor.

WSR 19-22-104
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2019-10—Filed November 6, 2019, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-108.

Title of Rule and Other Identifying Information: Affordable Care Act (ACA) protections.

Hearing Location(s): On December 13, 2019, at 10:00 a.m., at 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: December 19, 2019.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes these rules to implement the 2019 legislative directives in ESHB [SHB] 1870 (chapter 33, Laws of 2019). With adoption of the rules, carriers will have state-based standards codified that mirror ACA protections, and understand the commissioner's expectations as to compliance with nondiscrimination requirements currently in the ACA.

Reasons Supporting Proposal: ESHB [SHB] 1870 directs the commissioner to adopt rules to implement ESHB [SHB] 1870; these proposed rules explain requirements not previously codified in Washington state, but that are part of current federal law, and which ESHB [SHB] 1870 establishes as a state standard without reference or incorporation by reference to the ACA.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.012, 48.43.01211, 48.43.0123, 48.43.0124, 48.43.0126, 48.43.0127, 48.43.0128, 48.43.715.

Statute Being Implemented: ESHB [SHB] 1870 (chapter 33, Laws of 2019).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40260, Olympia, WA, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40255, Olympia,

WA, 360-725-7117; and Enforcement: Toni Hood, P.O. Box 40255, Olympia, WA, 360-725-7050.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7170.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

November 6, 2019
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-3050 Explanation of right to review. A carrier must clearly communicate in writing the right to request a review of an adverse benefit determination.

(1) At a minimum, the notice must be sent at the following times:

(a) Upon request;

(b) As part of the notice of adverse benefit determination;

(c) To new enrollees at the time of enrollment; and

(d) Annually thereafter to enrollees, group administrators, and subcontractors of the carrier.

(e) The notice requirement is satisfied if the description of the internal and external review process is included in or attached to the summary health plan descriptions, policy, certificate, membership booklet, outline of coverage or other evidence of coverage provided to participants, beneficiaries, or enrollees.

(2) Each carrier and health plan must ensure that its network providers receive a written explanation of the manner in which adverse benefit determinations may be reviewed on both an expedited and nonexpedited basis.

(3) Any written explanation of the review process must include information about the availability of Washington's designated ombudsman's office, the services it offers, and contact information. A carrier's notice must also specifically direct appellants to the office of the insurance commissioner's consumer protection division for assistance with questions and complaints.

(4) The review process must be accessible to persons who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to request review or participate in the review process.

(a) Carriers must conform to federal ((~~requirements~~)) rules and guidance in effect on January 1, 2017, to provide notice of the process in a culturally and linguistically appropriate manner to those seeking review.

(b) In counties where ten percent or more of the population is literate in a specific non-English language, carriers must include in notices a prominently displayed statement in the relevant language or languages, explaining that oral assistance and a written notice in the non-English language are available upon request. Carriers may rely on the most recent data published by the U.S. Department of Health and Human Services Office of Minority Health to determine which counties and which languages require such notices.

(c) This requirement is satisfied if the National Commission on Quality Assurance certifies the carrier is in compliance with this standard as part of the accreditation process.

(5) Each carrier must consistently assist appellants with understanding the review process. Carriers may not use and health plans may not contain procedures or practices that the commissioner determines discourage an appellant from any type of adverse benefit determination review.

(6) If a carrier reverses its initial adverse benefit determination, which it may at any time during the review process, the carrier or health plan must provide appellant with written or electronic notification of the decision immediately, but in no event more than two business days of making the decision.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5400 Purpose and scope. For plan years beginning on or after January 1, 2014, each nongrandfathered health benefit plan offered, issued, or renewed to small employers or individuals, both inside and outside the Washington health benefit exchange, must provide coverage for a package of essential health benefits, pursuant to RCW 48.43.715. WAC 284-43-5400 through 284-43-5820 explains the regulatory standards defining this coverage, and establishes supplementation of the base-benchmark plan consistent with ((~~PPACA and~~)) RCW 48.43.715, and the parameters of the state EHB-benchmark plan.

(1) WAC 284-43-5400 through 284-43-5820 do not apply to a health benefit plan that provides excepted benefits as described in section 2722 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-21), ((~~nor~~)) to a health benefit plan that qualifies as a grandfathered health plan as defined in RCW 48.43.005, nor to a health plan excluded from the definition of "health plan" as defined in RCW 48.43.005.

(2) WAC 284-43-5400 through 284-43-5820 do not require provider reimbursement at the same levels negotiated by the base-benchmark plan's issuer for their plan.

(3) WAC 284-43-5400 through 284-43-5820 do not require a health benefit plan to exclude the services or treatments from coverage that are excluded in the base-benchmark plan.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

WAC 284-43-5602 Essential health benefits package benchmark reference plan. A nongrandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2017, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct*

Gold + small group plan, policy form number WW0114CC ONMSD and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014. The SERFF form filing number is RGWA-128968362.

(2) The services and items covered by a health benefit plan that are within the categories ((~~identified in Section 1302(b) of PPACA~~)) defined in RCW 48.43.005 as "essential health benefits" including, but not limited to:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity and newborn care;

(e) Mental health and substance use disorder services, including behavioral health treatment;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive and wellness services and chronic disease management;

(j) Pediatric services, including oral and vision care; and

(k) Other services as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

(4) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-43-5622 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2017, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-5642, 284-43-5702, and 284-43-5782.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2017, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-5642, 284-43-5702, and 284-43-5782 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered a method of accessing services, and are not a separate benefit for purposes of the essential health benefits package. Issuers must provide essential health benefits consistent with the requirements of ((~~(add RCW citation for SSB 5175 when it becomes available)~~)) RCW 48.43.735.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital. The commissioner will approve health benefit plans for offer in Washington state that are, at a minimum, consistent with current state law, and with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those specifically found in 81 Fed. Reg. 31375, et seq. (2016), that were in effect on January 1, 2017.

(8) Benefits under each category set forth in WAC 284-43-5642, 284-43-5702, or 284-43-5782 must be covered for both pediatric and adult populations unless:

(a) A benefit is specifically limited to a particular age group in the base-benchmark plan and such limitation is consistent with state and federal law; or

(b) The category of essential health benefits is specifically stated to be applicable only to the pediatric population, such as pediatric oral services.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation, and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted under WAC 284-43-5642, 284-43-5702, and 284-43-5782.

(11) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 16-19-085, filed 9/20/16, effective 10/21/16)

WAC 284-43-5642 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than:

(A) Covered nutritional counseling; and

(B) Obesity-related services for which the U.S. Preventive Services Task Force for prevention and chronic care has issued A and B recommendations on or before the applicable plan year, which issuers must cover under subsection (9) of this section.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations; and

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan must include hospitalization where mental illness is the primary diagnosis, and must classify these services under the mental health and substance use disorder benefits category.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) ((~~Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;~~

(~~ii~~)) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

((~~(iii)~~)) (ii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

((~~(iv)~~)) (iii) Reversal of sterilizations; and

((~~(v)~~)) (iv) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

((~~(c)~~)) (d) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017((~~, and should not be included in essential health benefit plans~~)). Health plans may not include the base-benchmark plan limitations listed below and must cover all services consistent with 42 U.S.C. 18116, Sec. 1557, RCW 48.30.300, 48.43.0128, 48.43.072, 48.43.073 and 49.60.040:

(i) The base-benchmark plan allows a waiting period for transplant services; and

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services. ((~~Health plans must cover such services consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040.~~

~~(d)~~)) (e) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

((~~(e)~~)) (f) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, ((~~but nothing in this section requires an issuer to offer the benefit,~~)) and be consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115, as those sections do not require but do not prohibit an issuer from offering the benefit. This subsection does not relieve an issuer of requirements of current state law related to coverage for termination of pregnancy.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with federal rules and guidance implementing 42 U.S.C. 18116, ((~~Section~~)) Sec. 1557, as of January 1, 2017, including those found at 81 Fed. Reg. 31375 et seq. (2016), RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and

(iii) Court-ordered mental health treatment which is not medically necessary.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits

imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures ((~~for women with reproductive capacity~~));

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(iv) Reproductive health-related over-the-counter drugs, devices and products approved by the federal Food and Drug Administration.

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(iii) An issuer may include over-the-counter medications in its formulary for purposes of establishing quantitative limits and administering the benefit.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X-ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X-ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base- benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification

of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the coverage requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits. Medical management techniques may not be used that limit enrollee choice in accessing the full range of contraceptive drugs, devices, or other products approved by the federal Food and Drug Administration.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan establishes specific limitations on services classified to the preventive services category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans.

Specifically, the base-benchmark plan excludes coverage for obesity or weight control other than covered nutritional counseling. Health plans must cover certain obesity-related services that are listed as A or B recommendations by the U.S. Preventive Services Task Force, consistent with 42 U.S.C. 300gg-13 (a)(1) and 45 C.F.R. 147.130 (a)(1)(i).

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with ((~~Section~~)) Sec. 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Ser-

vices, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) Each category of essential health benefits must at a minimum cover services required by current state law and be consistent with federal rules and guidance implementing 42 U.S.C. 18115, Sec. 1557, as codified at 81 Fed. Reg. 31375 (2016), that were in effect on January 1, 2017.

(13) This section applies to health plans that have an effective date of January 1, ((~~2017~~)) 2020, or later, and student health plans with an effective date of January 1, 2021, or later.

NEW SECTION

WAC 284-43-5910 Prohibition on organ transplant waiting periods. An issuer offering an individual, small group or large group health plan may not impose waiting periods for organ transplant services in any health plan.

NEW SECTION

WAC 284-43-5920 Health plan rescission. A health plan cannot be rescinded by an issuer during the coverage period, except for an enrollee who has performed an act or practice that constitutes fraud or makes an intentional misrepresentation of a material fact as prohibited by the terms of the plan or coverage. If the plan is rescinded, the issuer must refund to the enrollee all payments made by or on behalf of the enrollee for the health plan coverage.

NEW SECTION

WAC 284-43-5930 Qualified health plan marketing and benefit design. (1) An issuer offering qualified health plans as defined in 42 U.S.C. 18021, and its officials, employees, agents, and representatives must not employ marketing practices or benefit designs with respect to these plans that the commissioner determines will have the affect of discouraging the enrollment of individuals with significant health needs. An example of such a prohibited design may occur when there are multiple nonspecialty drugs for persons with a specific condition or disorder, and a health plan places a majority of the drugs in the highest cost tier of the formulary.

(2) The commissioner will determine whether an issuer's actions to comply with this section are consistent with current state law, the legislative intent underlying RCW 48.43.0128 to maintain enrollee protections of the Affordable Care Act, and the federal regulations and guidance in effect as of January 1, 2017, including those issued by the U.S. Department of Health and Human Services Office of Civil Rights.

NEW SECTION

WAC 284-43-5940 Nondiscrimination in individual and small group health plans. (1) An issuer offering a nongrandfathered individual or small group health plan, and the issuer's officials, employees, agents, or representatives may not:

(a) Design plan benefits, including formulary design, or implement its plan benefits, in a manner that results in discrimination against individuals because of their age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions; and

(b) With respect to health plan administration, member communication, medical protocols or criteria for medical necessity or other aspects of health plan operations:

(i) Discriminate on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(ii) Deny, cancel, limit, or refuse to issue or renew a health plan, or deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(iii) Have or implement marketing practices or benefit designs that discriminate on the basis of race, color, national origin, sex, gender identity, sexual orientation, age, or disability;

(iv) Deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for any health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that an individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available;

(v) Have or implement a categorical coverage exclusion or limitation for all health services related to gender transition; or

(vi) Otherwise deny or limit coverage, deny or limit coverage of a claim, or impose additional cost sharing or other limitations or restrictions on coverage, for specific health services related to gender transition if such denial, limitation, or restriction results in discrimination against a transgender individual.

(2) The enumeration of specific forms of discrimination in subsection (1)(b)(ii) through (vi) of this section does not limit the general applicability of the prohibition in subsection (1)(b)(i) of this section.

(3) Nothing in this section may be construed to prevent an issuer from appropriately utilizing fair and reasonable medical management techniques. Appropriate use of medical management techniques includes use of evidence based criteria for determining whether a service or benefit is medically necessary and clinically appropriate.

(4) The commissioner will determine whether an issuer's actions to comply with this section are consistent with current state law, the legislative intent underlying RCW 48.43.0128 to maintain enrollee protections of the Affordable Care Act, and the federal regulations and guidance in effect as of January 1, 2017, including those issued by the U.S. Department of Health and Human Services Office of Civil Rights.

NEW SECTION

WAC 284-43-5950 Access for individuals with limited-English proficiency and individuals with disabilities. Each issuer must take fair and reasonable steps to provide meaningful access to each individual with limited-English proficiency and each individual with a disability who is

enrolled in their nongrandfathered individual or small group health plans, consistent with federal rules and guidance implementing 42 U.S.C. 18116, Sec. 1557, including those set forth in the 81 Fed. Reg. 31375 (2016), that were in effect on January 1, 2017.