WSR 16-06-022
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 22, 2016, 8:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-032.

Title of Rule and Other Identifying Information: WAC 260-70-580 Official veterinarian's list.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds language to ensure reciprocity is enforced for horses appearing on vet lists from other jurisdictions.

Reasons Supporting Proposal: This is done to protect the industry by ensuring horses that may be unsound are observed by an official veterinarian that was placed on a list in another jurisdiction prior to entry.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 22, 2016
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 15-17-068, filed 8/15/15, effective 9/15/15)

WAC 260-70-580 Official veterinarian's list. (1) An official veterinarian will maintain a list of all horses determined by an official veterinarian to be unfit to compete in a race due to illness, physical distress, unsoundness, infirmity or other medical condition.

(2) A horse may be removed from the veterinarian's list when an official veterinarian determines the horse is capable of competing in a race.

(a) Horses placed on the veterinarian's list that are required to work prior to being removed from the list will remain on the list for a minimum of seven days. (For purposes of counting days, the first day is the day the horse is placed on the veterinarian's list.)

(b) Horses that must work to be removed from the veterinary list due to soreness, lameness, or certain injuries will be allowed to work no sooner than the eighth day after being placed on the list.

(i) Works should be scheduled with an official veterinarian twenty-four hours in advance.

(ii) The official veterinarian may require a physical exam prior to approving the work.

The WHRC will ensure reciprocity with other jurisdictions veterinarians' lists. No horse will be allowed to enter that appears on any veterinarian's list in any other jurisdiction until such time as the WHRC's official veterinarian approves the entry. In order to remove a horse from another jurisdictions list, the horse may be required to follow that jurisdictions procedures for removal from the "list."

(iii) Horses must work a minimum distance to be determined by an official veterinarian in a time comparable for the track condition that day.

(iv) A blood test will be taken by an official veterinarian following the workout and medications levels may not exceed permitted post-race levels. The horse may be allowed to enter "conditionally" prior to the report from the testing laboratory. If the sample is reported to exceed a post-race allowable threshold for an approved medication, the horse will be scratched.

(c) Horses placed on the veterinarian's list that are not required to work may not race for a minimum of thirteen days from the date placed on the list. (For purposes of counting days, the first day is the day the horse is placed on the veterinarian's list.)

WSR 16-06-023
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 22, 2016, 8:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-009.

Title of Rule and Other Identifying Information: WAC 260-70-640 Permitted medication.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies when multiple NSAIDs may be permitted in a post race sample.

Reasons Supporting Proposal: Prior language was confusing and lead to discussions on how to make it clearer if more than one NSAID is detected in a post race sample.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 22, 2016
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-07-005, filed 3/9/12, effective 4/9/12)

WAC 260-70-640 Permitted medication. Trainers using permitted medication in the care of their horses are subject to all rules governing such medications. Failure to administer permitted medication to a horse on a program of permitted medication is a violation of these rules.

(1) The use of one of three approved nonsteroidal anti-inflammatory drugs (NSAIDs) is permitted under the following conditions:

(a) The drug may not exceed the following permitted serum or plasma threshold concentrations, which are consistent with administration by a single intravenous injection at least twenty-four hours before the post time for the race in which the horse is entered:

(i) Phenylbutazone - 5 micrograms per milliliter in overnight and nongraded stakes races, and 2 micrograms per milliliter in graded stakes races;

(ii) Flunixin - 50 nanograms per milliliter;

(iii) Ketoprofen - 10 nanograms per milliliter.

(b) No NSAID, including the approved NSAIDs listed in this rule, may be administered within the twenty-four hours before post time for the race in which the horse is entered.

(c) The presence of ((~~more than one of the three~~)) a second approved NSAID((~~s, with the exception of~~)) will not be considered a violation if the approved NSAID is not over the secondary threshold as follows:

(i) Phenylbutazone ((~~in a concentration below 1 microgram per milliliter of serum or plasma or~~)) - 1 mcg per milliliter;

(ii) Flunixin - 3 ng per milliliter;

(iii) Ketoprofen - 1 ng per milliliter.

(d) Any unapproved NSAID in the post-race serum or plasma sample is not permitted. The use of all but one of the approved NSAIDs must be discontinued at least forty-eight hours before the post time for the race in which the horse is entered.

(2) Any horse to which a NSAID has been administered is subject to having a blood and/or urine sample(s) taken at the direction of an official veterinarian to determine the quantitative NSAID level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s).

WSR 16-06-024

PROPOSED RULES

HORSE RACING COMMISSION

[Filed February 22, 2016, 8:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-121.

Title of Rule and Other Identifying Information: Chapter 260-52 WAC, The race—Paddock to finish.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds language that describes when purse money is officially deemed as earned for the owners.

Reasons Supporting Proposal: Explains that purse money is not officially earned until such time as the post race sample is reported as "clear" by the official laboratory.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 22, 2016
Douglas L. Moore
Executive Secretary

NEW SECTION

WAC 260-52-075 Declaring race "official" in respect to purses. No purse money may be officially won by the owners of any horse for which a test sample was submitted until the testing laboratory reports that the sample is clear of prohibited substances or there are no overages of permitted medications. Upon notice of a positive sample by the testing laboratory, no purse may be released to the owners of the horse in question pending a final determination of the alleged infraction.

WSR 16-06-025
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 22, 2016, 8:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-060.

Title of Rule and Other Identifying Information: WAC 260-28-295 Trainer responsibility.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adds language to ensure that trainers notify owners of potential infractions involving their horses.

Reasons Supporting Proposal: There is no current requirement that trainers must notify owners of violations involving their horses, particularly when [with] the possibility of a loss of purse.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 22, 2016
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-05-042, filed 2/10/12, effective 3/12/12)

WAC 260-28-295 Trainer responsibility. The purpose of this section is to identify the minimum responsibilities of the trainer that pertain specifically to the health and well-being of horses in his/her care.

(1) The trainer is responsible for and is the absolute insurer of the condition of the horses entered regardless of the acts of third parties.

(2) The trainer is responsible for the condition of horses in his/her care.

(3) The trainer shall immediately notify the owner(s) of any horses in the trainer's care of any pending rule violations involving their horse(s) including, but not limited to, alleged medication violations. Notice to the trainer shall be deemed notice to the owner.

(4) The trainer is responsible for the presence of any prohibited drug, medication, or other prohibited substance, including permitted medication in excess of the maximum allowable concentration, in horses in his/her care. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable concentration, as reported by a commission-approved laboratory, is prima facie evidence of a violation of this rule. In the absence of substantial evidence to the contrary, the trainer will be held responsible.

((~~(4)~~)) (5) A trainer will prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

((~~(5)~~)) (6) A trainer whose horse has been claimed remains responsible for violation of any rules regarding that horse's participation in the race in which the horse is claimed.

((~~(6)~~)) (7) The trainer is responsible for:

(a) Maintaining the assigned stable area in a clean, neat and sanitary condition at all times;

(b) Using the services of those veterinarians licensed by the commission to attend to horses that are on association grounds;

(c) The proper identity, custody, care, health, condition and safety of horses in his/her care;

(d) Immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

(e) Promptly reporting to the racing secretary and an official veterinarian when a posterior digital neurectomy (heel nerving) is performed on a horse in his/her care and ensuring that such fact is designated on its certificate of registration;

(f) Promptly report to the racing secretary, when mares who have been entered to race, have been bred;

(g) If a colt or horse has been gelded, promptly submit a completed gelding report to The Jockey Club Office, or report the fact to the racing secretary;

(h) Promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the commission to the stewards and the official veterinarian and compliance with the rules in this chapter governing postmortem examinations;

(i) Maintaining knowledge of the medication record and medication status of horses in his/her care;

(j) Immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

(k) Ensuring the fitness to perform creditably at the distance entered;

(l) Ensuring that every horse he/she has entered to race is present at its assigned stall for a prerace soundness inspection as prescribed in chapter 260-70 WAC;

(m) Ensuring proper bandages, equipment and shoes;

(n) Attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so; and

(o) Ensuring that all the trainer's employees wear a safety helmet and safety vest while on horseback, in compliance with WAC 260-12-180.

WSR 16-06-029
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 22, 2016, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-017.

Title of Rule and Other Identifying Information: WAC 260-40-065 Multiple entries.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows a trainer to enter up to three horses in an overnight race with restrictions to increase field size.

Reasons Supporting Proposal: This would give an opportunity for trainers to enter up to three horses, with different ownerships, in an overnight race increasing field size and handle for the industry.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 22, 2016
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-03-054, filed 1/13/14, effective 2/13/14)

WAC 260-40-065 Multiple entries. A trainer, owner, or authorized agent may not enter and start more than two horses of the same or separate ownership in a purse race or overnight event, except under the following conditions:

(1) A trainer may submit a third entry when there are at least seven prior entries in the race. The third entry may not exclude a single entry;

When a trainer submits a third entry, no more than two of the entrants may have common ownership;

(2) In stake races((~~;~~

~~(2) Races in which there are fees required to nominate or enter; and~~

~~(3) Allowance/optional claiming or maiden special weight races. In these races a trainer may not enter more than three horses. The third entry may not exclude a single entry, or be allowed if there are less than seven entries received prior to the entry of the trainer's third horse~~)) or races in which there are fees required to nominate, enter, or start a trainer there are no restrictions.

WSR 16-06-033
PROPOSED RULES
BOARD OF ACCOUNTANCY
[Filed February 23, 2016, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-107.

Title of Rule and Other Identifying Information: WAC 4-30-060 What are the education requirements to qualify to apply for the CPA examination?

Hearing Location(s): Evergreen Plaza, 2nd Floor Conference Room, 711 Capitol Way South, Suite 200, Olympia, WA 98501, on April 19, 2016, at 9:00 a.m.

Date of Intended Adoption: April 20, 2016.

Submit Written Comments to: Charles Satterlund, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail customerservice@cpaboard.wa.gov, fax (360) 664-9190, by March 25, 2016.

Assistance for Persons with Disabilities: Contact Kirsten Donovan by April 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (telebraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is needed to eliminate the following sentence in WAC 4-30-060 (1)(c): "For purposes of meeting this subsection, individuals will be given 1.5 credits for each 1.0 graduate level credit of accounting courses taken."

Reasons Supporting Proposal: This change will align the qualifications on a national level to ensure Washington state is substantially equivalent to the other state boards.

Statutory Authority for Adoption: RCW 18.04.055(5), 18.04.105(1).

Statute Being Implemented: RCW 18.04.055(5), 18.04.-105(1).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles Satterlund, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0785.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328 (5)(a).

February 22, 2016
Charles E. Satterlund, CPA, CIA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-060 What are the education requirements to qualify to apply for the CPA examination? (1) **Education requirements:** Effective July 1, 2000, to apply for the CPA examination you must have completed:

(a) At least one hundred fifty semester hours (two hundred twenty-five quarter hours) of college education, including;

(b) A baccalaureate or higher degree; and

(c) An accounting major or concentration as defined as at least:

(i) Twenty-four semester hours (thirty-six quarter hours) or the equivalent in accounting subjects of which at least fifteen semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite)((~~. For the purposes of meeting this subsection, individuals will be given 1.5 credits for each 1.0 graduate level credit of accounting courses taken~~)); and

(ii) Twenty-four semester hours (thirty-six quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.

((~~(d) The board will not recognize accounting concentration credits awarded for "life experience" or similar activities retroactively evaluated and recognized by colleges or universities. This restriction is not intended to apply to internships prospectively approved by colleges or universities.~~))

(2) **One hundred eighty-day provision:** If you expect to meet the education requirements of this section within one hundred eighty days following the examination, you will be eligible to take the CPA examination provided you submit a signed Certificate of Enrollment from the educational institution in which you are enrolled stating that you will meet the board's education requirements within one hundred eighty days following the day you first sit for any one section of the examination. If you apply for the exam using the one hundred eighty-day provision, then within two hundred ten days of first sitting for any section of the exam, you must provide the examination administrator complete documentation demonstrating that you met the board's education requirements within one hundred eighty days of first sitting for any one section of the exam. If you do not provide such documentation within the required two hundred ten-day time period, your exam score(s) will not be released and you will not be given credit for any section(s) of the examination. Applicants failing to provide such documentation must reapply as a first-time applicant.

(3) **Education obtained outside the United States:** If you obtained all or a portion of your education outside the United States you must have your education evaluated by a board approved foreign education credential evaluation service. The board will establish the criteria for board approval of foreign education credential evaluation services. The board ((~~will~~)) does not provide education credential evaluation services.

(4) **Semester versus quarter hours:** As used in these rules, a "semester hour" means the conventional college semester hour. Your quarter hours will be converted to semester hours by multiplying them by two-thirds.

(5) **Accreditation standards:** For purposes of this rule, the board will recognize colleges and universities which are accredited in accordance with (a) through (c) of this subsection.

(a) The accredited college or university must be accredited at the time your education was earned by virtue ((~~of membership in one of the following accrediting agencies:~~

~~(i) Middle States Association of College and Secondary Schools;~~

~~(ii) New England Association of Schools and Colleges;~~

~~(iii) North Central Association of Colleges and Schools, Higher Learning Commission;~~

~~(iv) Northwest Commission on Colleges and Universities (formerly the Northwest Association of Schools and Colleges);~~

~~(v) Southern Association of Colleges and Schools;~~

~~(vi) Western Association of Schools and Colleges; and~~

~~(vii) Accrediting Commission for Independent Colleges and Schools, or its predecessor, the Accrediting Commission of the Association of Independent Colleges and Schools~~)) of being listed on the U.S. Department of Education's Database of Accredited Postsecondary Institutions and Programs as a regionally or nationally accrediting agency.

(b) If an institution was not accredited at the time your education was earned but is so accredited at the time your application is filed with the board, the institution will be deemed to be accredited for the purpose of (a) of this subsection provided that it:

(i) Certifies that your total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(ii) Furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the preaccrediting courses used to qualify you for a concentration in accounting are substantially equivalent to postaccrediting courses.

(c) If your degree was received at an accredited college or university as defined by (a) or (b) of this subsection, but the educational program which was used to qualify you for a concentration in accounting included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which your degree was received, provided the accredited institution either:

(i) Has accepted such courses by including them in its official transcript; or

(ii) Certifies to the board that it will or would accept such courses for credit toward graduation.

(6) **Alternative to accreditation:** If you graduated from a ((~~four-year~~)) degree-granting institution that was not accredited at the time your degree was received or at the time your application was filed, you will be deemed to be a graduate of ((~~a four-year~~)) an accredited college or university if a

credentials evaluation service approved by the board certifies that your degree is equivalent to a degree from an accredited college or university as defined in subsection (5) of this section. The board does not provide education credential evaluation services.

WSR 16-06-034
PROPOSED RULES
BOARD OF ACCOUNTANCY

[Filed February 23, 2016, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-108.

Title of Rule and Other Identifying Information: WAC 4-30-062 How do I apply to take the CPA examination?

Hearing Location(s): Evergreen Plaza, 2nd Floor Conference Room, 711 Capitol Way South, Suite 200, Olympia, WA 98501, on April 19, 2016, at 9:00 a.m.

Date of Intended Adoption: April 20, 2016.

Submit Written Comments to: Charles Satterlund, Executive Director, P.O. Box 9131, Olympia, WA 98507-9131, e-mail customerservice@cpaboard.wa.gov, fax (360) 664-9190, by March 25, 2016.

Assistance for Persons with Disabilities: Contact Kirsten Donovan by April 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (telebraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making is needed to correct the error in one of the sentence structure for clarification.

Reasons Supporting Proposal: Rule making is needed to correct the error in one of the sentence structure for clarification.

Statutory Authority for Adoption: RCW 18.04.105(2).

Statute Being Implemented: RCW 18.04.105(2).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles Satterlund, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0785.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.328 (5)(a).

February 22, 2016
Charles E. Satterlund, CPA, CIA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-062 How do I apply to take the CPA examination? (1) **Application process and due dates:** Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within sixty days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all of the following are provided:

• Complete application information and requested documents;
• Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all of the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS), the NTS will be valid for one taking of the examination within the six months following the date of the NTS.

Notice of a denial of your application, or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content and grading:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The examination will consist of the following four sections: Auditing and attestation; financial, accounting and reporting; regulation; and business environment and concepts. The board may accept the advisory grading services of the American Institute of Certified Public Accountants.

(5) **Examination process:**

(a) **Conditions for examinations held prior to January 1, 2004:** Contact a customer service representative at customerservice@cpaboard.wa.gov or by phone at 360-753-2586.

(b) **For examinations taken after December 31, 2003:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

(i) To satisfy the examination requirement for a license you must have achieved a score of seventy-five on all four sections of the examination within a rolling eighteen-month period.

(ii) You may take the required four sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for eighteen months

from the actual date you successfully passed any particular section of the examination.

(iii) You must pass all four sections of the examination within a rolling eighteen-month period, which begins on the date that the first section(s) is passed. A section is considered passed on the date that ((~~is used is the date that~~)) you took the exam section and not the date that your grade(s) ((~~is~~)) are released.

(iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).

(v) In the event you do not pass all four sections of the examination within the rolling eighteen-month period, credit for any section(s) passed prior to the eighteen-month period will expire and you must retake any expired section.

WSR 16-06-048
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed February 24, 2016, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-110.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-832-0015 Am I eligible for the IFS program? and repeal WAC 388-832-0085 When there is state funding available to enroll additional clients on the IFS program, how will DDD select from the clients on the IFS program request list?.

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

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

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

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by March 22, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) intends to amend WAC 388-832-0015 and repeal WAC 388-832-0085 due to the 2014 operating supplemental budget directing DDA to move the state-funded individual and family services (IFS) program into a 1915(C) home and community-based services (HCBS) waiver. These changes will reflect that the IFS program is closed to new entrants.

Reasons Supporting Proposal: This change will allow the department to receive federal matching funds for these waivered services.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: ESSB 6002, 2014 Operating Supplemental Budget.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ann Whitehall, DDA, P.O. Box 45310, Olympia 98504-5310, (360) 725-3445.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impact small businesses or nonprofits. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical or financial eligibility.

February 19, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0015 Am I eligible for the IFS program? (1) The IFS program and SSP in lieu of IFS is not open to new enrollment.

(2) If you were enrolled in the IFS program before June 1, 2015 you are eligible to ((~~be considered for~~)) remain on the IFS program if you meet the following criteria:

(a) You are currently an eligible client of ((~~DDD~~)) DDA;

(b) You live in your family home;

(c) You are not eligible to enroll((~~ed~~)) in a ((~~DDD~~)) DDA home and community based services waiver defined in chapter 388-845 WAC;

(d) You are currently enrolled in ((~~traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services~~)) the IFS program;

(e) You are age three or older;

(f) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140; and

(g) You are not receiving a ((~~DDD~~)) DDA adult or child residential service or licensed foster care.

((~~(2)~~)) (3) If you are a parent who is a client of ((~~DDD~~)) DDA, you are eligible to ((~~receive~~)) remain on the IFS program ((~~services~~)) in order to promote the integrity of the family unit until your next assessment, provided:

(a) You meet the criteria in subsections ((~~(1)~~)) (2)(a) through (f) ((~~above~~)) of this section; and

(b) Your minor child who lives in your home is at risk of being placed up for adoption or into foster care.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-832-0085 When there is state funding available to enroll additional clients on the IFS program, how will DDD select from the clients on the IFS program request list?

WSR 16-06-054
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 24, 2016, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-049.

Title of Rule and Other Identifying Information: WAC 468-38-050 Special permits for extra-legal loads, revision of the rule is to clarify the language indicating where and how a permit can be issued. The revision also authorizes the holder of a special motor vehicle permit to display the permit by use of an electronic device.

Hearing Location(s): Transportation Building, Nisqually Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on April 19, 2016, at 1:30 p.m.

Date of Intended Adoption: April 19, 2016.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6350, by April 18, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by April 18, 2016, TTY 711 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-050, revision of the rule is to address the process of Washington state department of transportation (WSDOT) not accepting credit card payment for special motor vehicle permits. Also the revision authorizes the permittee the use of portable electronic devices to display their permit when required to display. The revision does not affect other existing rules.

Reasons Supporting Proposal: The proposed rule changes will address WSDOT policy of not accepting credit card[s] for purchase of special motor vehicle permits. Also the proposed rule changes will authorize the use of today's technology to assist the permit holder to comply with the requirement to carry a copy of the permit in the power unit at all times.

Statutory Authority for Adoption: RCW 46.44.090.

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

Name of Proponent: WSDOT traffic office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Wright, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-7341; and Enforcement: Captain Michael Saunders, 210 11th Street, General Administration Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new rule would authorize the use of electronic devices to display a permit and would not change content of the rule. Included in the revision is the new policy that WSDOT is not accepting permit fee payments by credit card.

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to this proposal.

February 24, 2016
Kara Larsen, Director
Torts, Claims and
Records Management

AMENDATORY SECTION (Amending WSR 11-17-130, filed 8/24/11, effective 9/24/11)

WAC 468-38-050 Special permits for extra-legal loads. (1) **When can the department or its agents issue a permit for an extra-legal move?** The following general conditions must be met:

(a) Application ((~~has been made in written or electronic format to the department or its agents (oral application is acceptable~~)) can be made in face-to-face over-the-counter transactions((~~;~~)) with the department or its agents and the applicant has shown there is good cause for the move. The requestor may self-issue a special motor vehicle permit for their vehicles when applicable. Application may be made in written or electronic format to the department's agents.

(b) The applicant has shown the configuration is eligible for a permit.

(c) The vehicle, vehicle combination and/or load has been thoroughly described and identified.

(d) The points of origin and destination and the route of travel have been stated and approved.

(e) The move has been determined to be consistent with public safety. The permit applicant has indicated that appropriate safety precautions will be taken as required by state law, administrative rule or specific permit instruction.

(2) **How must a vehicle(s), including load, be configured to be eligible for a special permit to move on the state highways?** A vehicle(s), including load, that can be readily or reasonably dismantled must be reduced to a minimum practical size and weight. Portions of a load may be detached and reloaded on the same hauling unit when the separate pieces are necessary to the operation of the machine or equipment which is being hauled: Provided, that the arrangement does not exceed special permit limits. Detached and reloaded pieces must be identified on the special permit. Permit requests for specific divisible loads are authorized under WAC 468-38-071.

(3) **Are there any exceptions to dismantling the configuration?** Yes. A vehicle, vehicle combination or load may stay assembled if by separating it into smaller loads or vehicles the intended use of the vehicle or load would be compromised (i.e., removing the boom from a self-propelled crane), the value of the load or vehicle would be destroyed (i.e., removing protective packaging), and/or it would require

more than eight work hours to dismantle using appropriate equipment. The permit applicant has the burden of proof in seeking an exception. Configurations that fall under the exception must not exceed special permit limits.

(4) **What does the applicant affirm when he/she signs the permit?** The permit applicant affirms:

(a) The vehicle or vehicle combination and operator(s) are properly licensed to operate and carry the load described in accordance with appropriate Washington law and administrative code.

(b) They will comply with all applicable requirements stipulated in the permit to move the extra-legal configuration.

(c) The move (vehicle and operator) is covered by a minimum of seven hundred and fifty thousand dollars liability insurance: Provided, that a noncommercial move (vehicle and operator) shall have at minimum three hundred thousand dollars liability insurance for the stated purpose.

(d) Except as provided in RCW 46.44.140, the official department special permit signed by the permittee, or a copy of the signed permit, must be carried on the power unit at all times while the permit is in effect. Moves made by designated emergency vehicles, receiving departmental permit authorization telephonically, are exempt from this requirement.

(e) A copy of a signed permit as noted in (d) of this subsection includes the electronic display of the signed permit on an electronic device with the following requirements:

(i) When a permittee chooses to display the permit electronically, the permittee accepts all liability for any damage or loss of display to the device during transport, inspection by enforcement personnel, or other times that the permit is to be displayed.

(ii) The displayed permit must be verifiable by law enforcement through the Washington state permitting system known as the electronic system network overweight oversize permit information (eSNOOPI) system.

(iii) The permittee agrees to authorize law enforcement to have physical control of the device for inspection of the permit when requested.

(iv) Permits containing routing information require the electronic device to have a screen display of no less than three and a half inches by five inches. Other permit types may have smaller screen displays.

(v) Display of the permit must be legible or the electronic device must have the ability to zoom the image so it is legible.

(vi) The permittee must comply with the requirements for electronic display of a permit or must have a paper copy of the permit carried on the power unit at all times while transporting the permitted load.

(5) **What specific responsibility and liability does the state assign to the permit applicant through the special permit?** Permits are granted with the specific understanding that the permit applicant shall be responsible and liable for accidents, damage or injury to any person or property resulting from the operation of the vehicle covered by the permit upon public highways of the state. The permit applicant shall hold blameless and harmless and shall indemnify the state of Washington, department of transportation, its officers, agents, and employees against any and all claims, demands, loss, injury, damage, actions and costs of actions whatsoever, that any of them may sustain by reason of unlawful acts, conduct or operations of the permit applicant in connection with the operations covered by the permit.

(6) **When and where can a special permit be acquired?** The following options are available:

(a) Special permits may be purchased at any authorized department of transportation office or agent Monday through Friday during normal business hours.

(b) ((~~An application for a permit may be submitted by facsimile, including charge card information to an authorized location. The special permit will be issued and returned by facsimile subject to normal business hours.~~

~~(c)~~)) Companies that would like to self-issue permits for their own vehicles may apply to the department for this privilege. Department representatives will work with the company to determine if self-issuing is appropriate.

((~~(d)~~)) (c) The department will maintain and publish a list of authorized permit offices and agents.

WSR 16-06-055

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed February 24, 2016, 3:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-19-048.

Title of Rule and Other Identifying Information: WAC 468-38-120 Transport of extra-legal manufactured housing, revision of the rule is to add language indicating modular homes would be treated the same as manufactured homes when referring to overheight when escort cars are required.

Hearing Location(s): Transportation Building, Nisqually Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on April 19, 2016, at 1:30 p.m.

Date of Intended Adoption: April 19, 2016.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6350, by April 18, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by April 18, 2016, TTY 711 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-120, revision of the rule is to add language indicating modular homes would be treated the same as manufactured homes when referring to overheight when escort cars are required. Requires no other changes in existing rules.

Reasons Supporting Proposal: The load item modular home and manufactured home are both of similar construction and materials. The only difference is modular home is transported on a separate trailer and the manufactured home is transported on its own axles. The proposal requests the requirement for a front pilot/escort car for height [to] be the same for similar load items.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

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

Name of Proponent: WSDOT traffic office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Wright, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-7341; and Enforcement: Captain Michael Saunders, 210 11th Street, General Administration Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The new rule revision would place the same pilot/escort car requirements for similar load items and would not change content of the rule.

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to this proposal.

February 24, 2016
Kara Larsen, Director
Torts, Claims and
Records Management

AMENDATORY SECTION (Amending WSR 12-18-007, filed 8/23/12, effective 9/23/12)

WAC 468-38-120 Transport of extra-legal manufactured housing. (1) **How many vehicles can be combined in the move of a manufactured home?** The vehicle combination is limited to two vehicles, a towing unit, sometimes referred to as a "toter," and the semi-trailer designed housing unit.

(2) **What are the dimensional limits of the combination?** While the overall combination is not limited by dimension, the following limits are established:

(a) **Length:** The length of the manufactured housing unit may not exceed seventy-five feet, including the length of the tongue.

(i) The department's administrator for commercial vehicle services, or designee, is authorized to issue permits, on an individual basis, authorizing the transport of a unit when the length exceeds that specified in (a) of this subsection, but the housing unit will not exceed eighty feet in length, including the length of the tongue.

(ii) In issuing permits under this rule, the administrator will determine the following:

(A) The safety of other highway users will not be impaired; and

(B) The adjacent states, through which the manufactured home may be transported, must also authorize the movement.

(b) **Width:** The width of the manufactured housing unit must not exceed a box (base) width of sixteen feet. The unit may have an eave provided it does not extend beyond either side by:

(i) More than thirty inches for units with a box width less than sixteen feet wide; or

(ii) More than sixteen inches for a unit with a box width of sixteen feet; however, the overall width shall not, under any circumstances, exceed eighteen feet.

(c) **Width exemptions:** External features, such as doorknobs, window fasteners, eave cap, clearance lights, and load securing devices, that extend no more than two inches on each side of the unit, are exempt from the overall width measurement.

(d) **Height:** The height of the unit is limited to the actual overhead clearance of the route.

(3) **What are the criteria for receiving an annual/monthly special permit versus a single trip special permit?**

(a) **Annual/monthly permits** are issued only to dealers or manufacturers described in chapter 46.70 RCW or licensed transporters described in chapter 46.76 RCW. Use of the annual/monthly permit is restricted to the movement of housing units with a box width not exceeding fourteen feet wide, plus an eave not to exceed twelve inches, and a height not to exceed fifteen feet measured from level ground when in transit mode.

(b) **Single trip permits** are required when the permit applicant is not a qualified dealer or transporter as described in (a) of this subsection, or when the width of the housing unit box exceeds fourteen feet wide, the overall width exceeds fifteen feet wide, and/or the height exceeds fifteen feet measured from level ground when in transit mode. **Housing units that exceed sixteen feet wide and/or sixteen feet high must also comply with the requirements of WAC 468-38-405 Superloads,** prior to the issuance of a special permit.

(4) **When is it necessary to include a pilot/escort vehicle(s) in the movement of a manufactured house?** The requirements for a pilot/escort vehicle escorting a manufactured home are the same as those found in WAC 468-38-100, except that the use of a height measuring device (pole) on the front pilot/escort vehicle is not required until the overall height of the housing unit exceeds fifteen feet. With respect to pilot/escort requirements for height in this section, the term housing unit includes modular homes as defined in RCW 46.04.303. The vehicle or load width referenced in WAC 468-38-100 is to be interpreted as overall width when measuring a manufactured home.

(5) **What are the insurance requirements, and what special reporting responsibilities does the transporter have in case of an accident?**

(a) Insurance requirements for the movement of a manufactured home are outlined in RCW 46.44.180.

(b) When an incident occurs while transporting a manufactured house under special permit, the transporter must immediately notify the nearest state patrol office if the damage to the manufactured home is greater than two hundred fifty dollars or if the damage to other vehicles or structures exceeds one hundred dollars. The transport of the home must not resume without permission from the state patrol.

(6) **What requirements must a manufactured home meet for axles, brakes, tires and other suspension components before it can be transported?**

(a) **Axles** on each housing unit in transport must be in sufficient number to support enough tires to comply with (c)(i) and (ii) of this subsection. Any housing unit exceeding fourteen feet wide must have a minimum of four axles.

(b) **Brakes** must be designed and installed to activate if the housing unit accidentally breaks away from the towing vehicle. The brakes on all vehicle/housing unit combinations must be capable of complying with the braking performance

requirements of RCW 46.37.351. In addition, there must be compliance with the following special installation criteria:

(i) For housing units manufactured prior to June 15, 1976, brake installation must, at a minimum, comply with the following table:

Width of Unit at Base	Number of Axles Required	Wheels w/ Brakes
> 8' 6" but < 10'	2 or more	All wheels on 2 axles (a towing unit w/minimum. 9,000 GVWR all wheels on 1 axle)
10' to 14' (under 60' in length)	2 or more (3 or more if > 60' long)	All wheels on 2 axles (tires w/minimum 8:00 x 14.5, 10 ply)

(ii) For all vehicle/housing unit combinations exceeding fourteen feet wide, all wheels on at least three of the axles must be properly equipped with brakes.

(c) **Tire** loadings are dependent on when the housing unit was manufactured and must comply as follows:

(i) **Tire loadings** on housing units manufactured **after January 1, 2002,** (labeled pursuant to *Code of Federal Regulation*, 24 C.F.R. 3282.362 (c)(2)(i)) may not exceed the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must comply with the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 C.F.R. 571.119, S5.1 (b)). Housing units with no verifiable date of manufacture must also not exceed the manufacturer's tire load rating.

(ii) **Tire loadings** on housing units manufactured **before January 1, 2002,** (labeled pursuant to 24 C.F.R. 3282.362 (c)(2)(i)) must not exceed more than eighteen percent above the manufacturer's rating as marked on the sidewall. In the absence of a sidewall marking, the tires on the housing unit must not exceed eighteen percent above the load rating specified in any of the publications of any organization listed in the *Federal Motor Carrier Safety Standard (FMCSS) No. 119* (49 C.F.R. 571.119, S5.1 (b)). Housing units transported on tires overloaded by nine percent or more must not be moved at speeds exceeding fifty miles per hour (eighty kilometers per hour).

(d) Tow **spare tires,** inflated and ready for use, must be carried during transport.

(e) The manufacturer's rating must not be exceeded for any **wheel, axle, drawbar, hitch, or other suspension device.**

(7) **Does a tow vehicle (toter) have any special requirements?** Yes. The tow vehicle must:

(a) Be equipped with dual wheels on the drive axle.

(b) Have a combined minimum gross axle weight rating, assigned by the manufacturer, of thirty-two thousand pounds, if the housing unit being transported exceeds fourteen feet wide.

(c) Have sufficient engine horsepower to maintain towing speeds of forty-five miles per hour on the interstate and thirty-five miles per hour on other highways.

(8) **What unique travel requirements must be complied with?** Requirements for signs, lights, unit covering, routes, speed, moving multiple units at the same time and lane of travel are as follows:

(a) **Signs** for the towing unit and housing unit must comply with WAC 468-38-155(7). The sign for the housing unit must be mounted on the rear of the unit, on a horizontal plane, between five and seven feet above the road surface.

(b) In addition to any other **lighting** requirements in law or rule, two six-inch flashing amber lights, with a minimum of thirty-five candle power, a flashing cycle of sixty to one hundred twenty times per minute during transit, must be mounted on the rear of the housing unit, on a horizontal plane, at least ten feet above the road surface. An additional two lights, of the same specifications, must be mounted above the roofline of the towing vehicle, either on the towing vehicle roof or the front of the housing unit. The two lights at each location, front and rear, must be located as close to the outside extremities of the housing unit as practical.

(c) **Coverings** of open sides may be with a rigid material such as plywood or hardboard, or a sufficiently strong ply plastic. When plastic is used, a grillwork of lumber or similar material must be applied to prevent tears and/or billowing of the material.

(d) **Routes** of travel with restrictions must be strictly adhered to. Housing units in transport mode that exceed sixteen feet high or sixteen feet wide must be approved for travel on a case-by-case basis, as per WAC 468-38-405, Superloads. **Dealers selling extra-legal manufactured homes must advise the prospective purchaser in writing that not all state highways are approved for the transport of manufactured homes in excess of twelve feet wide.**

(e) **Speed** of the in-transit housing unit is governed by WAC 468-38-175(5).

(f) **Multiple housing units moving together** must comply with WAC 468-38-175(6), Moves in convoy.

(g) The **right-hand lane must be used for travel,** except when passing or avoiding an obstruction. On two-lane highways, housing units must not pass other vehicles except when required to pass a slow moving vehicle that is hindering safe traffic flow.

(9) **Is a decal from the county treasurer required before a manufactured home can be transported?** Yes, except as provided for in RCW 46.44.170 (2)(a) and (b), a decal issued by the county treasurer must be displayed on the rear of the manufactured home during transport on public highways of this state. If the manufactured home is being transported as multiple units (double-wide or more), an individual decal must be displayed on each unit being transported.

(10) **How is the county treasurer decal issued?** The decal is issued at the same time the county treasurer issues the tax certificate that shows all taxes have been paid to date.

(11) **RCW 46.44.170 requires the department to design the decal for uniform implementation. What are the design specifications?** The decal must:

(a) Be at least eight and one-half inches square.

(b) Be printed on Appleton Radiant Fluorescent Bristol (weight .010) or paper of comparable quality.

(c) Be fluorescent orange in color.

(d) Disclose the make, model and serial number of the manufactured home, the date issued, the name of the transporter, the transporter's WUTC permit number ID required, the department of transportation special motor vehicle permit number, and the name of the county issuing the decal.

(e) Clearly display the expiration date of the decal, which must not be more than fifteen days after the date issued.

(12) **Can decals be transferred to other housing units?** Under no circumstance can the decal be transferred.

(13) **What other vehicles are treated like manufactured housing for permitting purposes?** Any enclosed structure built on a manufactured housing type chassis with its own axles must comply with the provisions of this section to receive an overlegal permit, including, but not limited to: Portable construction offices, portable classrooms, and "park-model" trailers.

WSR 16-06-067
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed February 25, 2016, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-073.

Title of Rule and Other Identifying Information: WAC 458-18-210 Refunds—Procedure—Interest, is amended to incorporate language from two legislative changes:

- HB 2446, 2014 regular session (chapter 16, Laws of 2014); and
- SSB 5276, 2015 regular session (chapter 174, Laws of 2015).

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on April 5, 2016, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.*

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: April 12, 2016.

Submit Written Comments to: Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments incorporate two legislative changes at new subsections (2) and (8) of the rule, respectively.

HB 2446, 2014 regular session (chapter 16, Laws of 2014), states no claim is required for a refund in certain circumstances.

SSB 5276, 2015 regular session (chapter 174, Laws of 2015), states a county legislative authority may authorize a refund on a claim filed more than three years after the due date of the payment sought to be refunded if the claim arises from taxes paid as a result of a manifest error in a description of property.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Statute Being Implemented: RCW 84.69.030.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

February 25, 2016
Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-059, filed 11/12/10, effective 12/13/10)

WAC 458-18-210 Refunds—Procedure—Interest. (1) Refunds provided for by chapter 84.69 RCW are made by the following method: Unless one of the exceptions in subsection (2) of this rule applies, the taxpayer must file a claim for refund with the county. This claim must:

(a) Be verified by the person who paid the tax, his guardian, executor or administrator; and

(b) Be filed within three years after the due date of the payment sought to be refunded; and

(c) State the statutory ground upon which the refund is claimed.

(2) No claim for an order of refund is required for a refund that is based upon:

(a) An order of the board of equalization, state board of tax appeals, or court of competent jurisdiction justifying a refund under RCW 84.69.020 (9) through (12);

(b) A decision by the treasurer or assessor that is rendered within three years after the due date of the payment to be refunded, justifying a refund under RCW 84.69.020; or

(c) A decision by the assessor or department approving an exemption application that is filed under chapter 84.36 RCW within three years after the due date of the payment to be refunded.

(3) All claims for refunds must be certified as correct by the county assessor and treasurer and not be refunded until so ordered by the county legislative authority.

((~~(3)~~)) (4) For all refunds, the rate of interest is set out in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid.

((~~(4)~~)) (5) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid until the refund is made.

((~~(5)~~)) (6) Refunds on a state, county or district-wide basis shall not commence to accrue interest until six months following the date of the final order of the court.

((~~(6)~~)) (7) Refunds may be made without interest within sixty days after the date of payment if:

(a) Paid more than once; or

(b) The amount paid exceeds the amount due on the property as shown on the tax roll.

(8) A county legislative authority may authorize a refund on a claim filed more than three years after the due date of the payment sought to be refunded if the claim arises from taxes paid as a result of a manifest error in a description of property.

(a) A manifest error is defined in WAC 458-14-005, and means an error in listing or assessment that does not involve a property revaluation. A manifest error can be seen, clearly shown, and corrected without applying appraisal judgment in forming a decision and revaluing the property.

(b) An example of a manifest error in the description of property is incorrect square footage listed in an assessment property record. The assessor may correct the error by updating the property record with the correct square footage. The assessed value may change due to correct square footage, but the correction must reference the records and valuation methods applied to similar properties.

(c) Property characteristics determined using appraisal judgment are not manifest errors in the description of the property. Examples of property characteristics that are not manifest errors in property description include, but are not limited to, quality of construction, condition, effective age, view, and others.

(d) A manifest error in the description of the property does not include other circumstances involving error. Other circumstances involving error that are not eligible for a refund on a claim filed more than three years after the due date of the payment sought include, but are not limited to, the following:

(i) Taxes mistakenly paid by a person who did not have a legal interest in the property;

(ii) Taxes mistakenly paid by an individual exempted under RCW 84.36.381 through 84.36.389; or

(iii) Taxes abated for a destroyed property claim under chapter 84.70 RCW.

WSR 16-06-068
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 16-01—Filed February 25, 2016, 2:16 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:

- Chapter 173-400 WAC, General regulations for air pollution sources, establishes the regulatory framework to ensure that healthy air quality exists in Washington, including meeting the federal air quality standards.
- Chapter 173-423 WAC, Low emission vehicles, establishes rules implementing the California motor vehicle emission standards adopted by the 2005 legislature.
- Chapter 173-476 WAC, Ambient air quality standards, establishes emission standards for the six federal criteria pollutants: Carbon monoxide, hydrocarbons, lead, ozone, small and large particles, and sulfur dioxide.

Hearing Location(s): Ecology will be holding two consecutive hearings to accept comments, Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on April 5, 2016, 2 p.m.

Agenda:

- **Hearing 1** - Rule-making Proposal - comments on the proposed rule amendments.
  - Presentation.
  - Question and answer session.
  - Oral comments on the rule proposal.
- **Hearing 2** - Immediately following, comments on submitting portions of the proposed rules into the state implementation plan (SIP).
  - Presentation.
  - Question and answer session.
  - Oral comments on the SIP proposal.

How to Participate at the Hearings:

- **Attend in-person:** Participants can attend and provide oral or written comments at the hearings.
- **Attend via Webinar:** Ecology is offering this hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access. To join the webinar click on the following link for more information and instructions https://wadismeetings.webex.com/wadismeetings/onstage/g.php?MTID=e9dff18b4b8cebe0fe5073e02f22e1c11.

Date of Intended Adoption: On or after April 20, 2016.

Submit Written Comments to: Elena Guilfoil, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, e-mail AQComments@ecy.wa.gov, fax (360) 407-7534, by April 12, 2016.

Assistance for Persons with Disabilities: Persons with hearing loss call 711 for Washington relay service. Persons with a speech disability call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology is proposing to amend:

- **Chapter 173-400 WAC**, **General regulations for air pollution sources,** to incorporate new federal rules, and changes to federal rules since the last time ecology amended this chapter.
  - Updates cover 40 C.F.R. Parts 50, 51, 52, 53, 60, 61, 62, 63, 65, 70, 75, 80, 82, 89, 124 and 1039.

- o The new source performance standards (40 C.F.R. Parts 60 and 62) and air toxic rules (40 C.F.R. Part 63) contain, among other updates:
  - ■ New requirements for boilers; residential wood heaters; solid waste incinerators; hospital/medical/infectious waste incinerators; sewage sludge incinerators; and
  - ■ Changes to existing requirements for petroleum refineries and aluminum plants.
- o Other changes to chapter 173-400 WAC include:
  - ■ Consolidating the adoption date for federal rules scattered throughout the chapter into one location.
  - ■ Correcting typographical errors.

- **Chapter 173-476 WAC**, **Ambient air quality standards,** to include the new lower federal ozone standard and associated monitoring/measurement requirements.
- **Chapter 173-423 WAC**, **Low emission vehicles,** to include updates to California motor vehicle emission standards. Updates:
  - o Provide one additional year for which the 4,000 mile supplemental federal test procedures (SFTP) may be used to certify LEV II vehicles.
  - o Clarify that if a LEV II vehicle optionally certifies to the nonmethane organic compound plus nitrogen oxides (NMOG+NOx) combined LEV III standards instead of separate NMOG and NOx LEV II standards, the NMOG+NOx combined LEV III standards must be met at 150,000 miles, even if the vehicle remains a LEV II vehicle.
  - o Place limitations on when LEV II SULEVS can certify to the combined NMOG+NOx LEV III standards.
  - o Establish an alternative NMOG+NOx fleet average that can be met as an alternative to the NMOG fleet average.
  - o Incorporate elements of the federal Tier 3 regulation in those cases where the Tier 3 regulations were more stringent than LEV III.
  - o Incorporate the current, applicable version(s) of:
    - ■ Test procedures to demonstrate compliance with the standards in Section 1961.
    - ■ SAE J2727 test procedure.
    - ■ Performance label specifications to demonstrate compliance with Section 1965.
  - o Specify that the AC17 Test Procedure in Section 1961.3 means the AC17 Air Conditioning Efficiency Test Procedures in 40 C.F.R. 86.167-17.
  - o Change the monitoring and OBD II requirements for diesel emission control technologies, the selection criteria for test sample groups and the mandatory recall provisions in Sections 1971.1 and 1968.2.
  - o Establish that the requirements of Section 2037 apply to medium-duty vehicles that certify to California's heavy-duty Phase 1 greenhouse gas emission standards.
  - o Define "useful life" for the purposes of Title 13, CCR, Article 2.1 "Procedures for In-Use Vehicle Voluntary and Influenced Recalls.["]
  - o Address other changes as needed to maintain consistency with the California motor vehicle emission standards, including but not limited to:
    - ■ Corrects the definition of heavy-duty vehicles in Section 1900.
    - ■ Corrects the definitions of light-duty truck and medium-duty passenger vehicle in Section 1900 to say that they also apply to vehicles certified to the standards in Section 1961.2.
    - ■ Makes an administrative change to 960.1 heading to add the missing word "trucks."
    - ■ General administrative corrections.

Why Are We Doing this Rule Making? We are doing this rule making to continue preserving Washington's healthy air by maintaining consistency with federal rules and California motor vehicle emission standards.

Chapter 173-400 WAC: Washington rules need to require compliance with the most recent federal rules. Maintaining Environmental Protection Agency (EPA) approval of our state air operating permit and prevention of significant deterioration programs requires the adoption of federal rules. Adding a single reference point for specifying the date of the federal rules proposed for adoption provides consistency for users of the rule and simplifies future updates.

Chapter 173-476 WAC: Adopting the lower federal ozone standard protects people from the harmful effects of ground level ozone smog and complies with a federal requirement.

Chapter 173-423 WAC: The federal Clean Air Act and RCW 70.120A.010 require ecology to maintain consistency with the California motor vehicle emission standards.

What Do We Intend to Accomplish?

- Continued or improved protection of human health and the environment by establishing consistency with EPA's rules and California's motor vehicle emission standards.
- Simplifying compliance for regulated parties.
- Maintaining delegation and approval of federal programs (air operating permit, prevention of significant deterioration, SIP).

Reasons Supporting Proposal: See "Purpose of the proposal" above for this information.

Statutory Authority for Adoption: For chapter 173-423 WAC is RCW 70.120A.010; and for chapters 173-400 and 173-476 WAC is RCW 70.94.152, 70.94.331, 70.94.860.

Statute Being Implemented: For chapter 173-423 WAC is chapter 70.120A RCW; and for chapters 173-400 and 173-476 WAC is chapter 70.94 RCW.

Rule is necessary because of federal law, Federal Clean Air Act - Section 110 in Part A, Part C, and Part D.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Ecology is proposing to adopt EPA requirements for sewage sludge incinerators. Ecology expects these requirements will be published in the Federal Register on or before the March 16, 2016, publication date of this notice in the *Washington State Register*. Should the incinerator rule not be included in the Federal Register by March 16, ecology will not adopt the EPA rule when we finalize this rule making.

Name of Proponent: Department of ecology, air quality program, governmental.

Name of Agency Personnel Responsible for Drafting: Elena Guilfoil, Department of Ecology, Lacey, Washington, (360) 407-6855; Implementation and Enforcement: Chapters 173-400 and 173-476 WAC, Al Newman, Department of Ecology, Lacey, Washington, (360) 407-6810 and chapter 173-423 WAC, Brett Rude, Department of Ecology, Lacey, Washington, (360) 407-6847.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), ecology is not required to prepare a small business economic impact statement because all proposed amendments fall within exemptions described in RCW 34.05.310(4).

Amendments to chapters 173-400 and 173-476 WAC:

- RCW 34.05.310 (4)(c), exempts rules adopting or incorporating by reference without material change federal statutes or regulations.
- RCW 34.05.310 (4)(d), exempts rules that only correct typographical errors or clarify language of a rule without changing its effect.

Amendments to chapter 173-423 WAC:

- RCW 34.05.310 (4)(e), rules the content of which is explicitly and specifically dictated by statute (in this case RCW 70.120A.010 directs ecology to amend its rules to maintain consistency with the California motor vehicle emission standards).

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328(5), ecology is not required to prepare a cost-benefit analysis because all proposed rule-making actions fall within allowed exemptions.

Amendments to chapters 173-400 and 173-476 WAC:

- RCW 34.05.328 (5)(iii), exempts rules adopting or incorporating by reference without material change federal statutes or regulations.
- RCW 34.05.328 (5)(iv), exempts rules that only correct typographical errors or clarify language of a rule without changing its effect.

Amendments to chapter 173-423 WAC:

- RCW 34.05.328 (5)(v), exempts rules the content of which is explicitly and specifically dictated by statute (in this case RCW 70.120A.010 directs ecology to amend its rules to maintain consistency with the California motor vehicle emission standards).

February 25, 2016
Polly Zehm
Deputy Director

NEW SECTION

WAC 173-400-025 Adoption of federal rules. Federal rules mentioned in this rule are adopted as they exist on January 1, 2016, except for WAC 173-400-050(7). Adopted or adopted by reference means the federal rule applies as if it was copied into this rule.

AMENDATORY SECTION (Amending WSR 11-06-060, filed 3/1/11, effective 4/1/11)

WAC 173-400-040 General standards for maximum emissions. (1) All sources and emissions units are required to meet the emission standards of this chapter. Where an emission standard listed in another chapter is applicable to a specific emissions unit, such standard takes precedence over a general emission standard listed in this chapter. When two or more emissions units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emissions units, and the relative contributions of the individual emissions units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emissions units.

All emissions units are required to use reasonably available control technology (RACT) which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of any chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the permitting authority shall, as provided in RCW 70.94.154, define RACT for each source or source category and issue a rule or regulatory order requiring the installation of RACT.

(2) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any emissions unit which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity except:

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to allow the soot blowing and grate cleaning necessary to the operation of boiler facilities. This practice, except for testing and trouble shooting, is to be scheduled for the same approximate times each day and the permitting authority must be advised of the schedule.

(b) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent.

(c) When two or more emission units are connected to a common stack, the permitting authority may allow or require the use of an alternate time period if it is more representative of normal operations.

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from twenty percent opacity standard.

(i) Visible emissions reader certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 C.F.R. Part 60, Appendix A, ((~~Reference~~)) test method 9 and ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

(ii) Military training exercises. Visible emissions resulting from military obscurant training exercises are exempt from compliance with the twenty percent opacity limitation provided the following criteria are met:

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting authority, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that result in cancellation of the training exercise, cease the use of obscurants during the exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(iii) Firefighter training. Visible emissions from fixed and mobile firefighter training facilities while being used to train firefighters and while complying with the requirements of chapter 173-425 WAC.

(3) **Fallout.** No person shall cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

(4) **Fugitive emissions.** The owner or operator of any emissions unit engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission:

(a) If located in an attainment area and not impacting any nonattainment area, shall take reasonable precautions to prevent the release of air contaminants from the operation.

(b) If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, the owner or operator shall be required to use reasonable and available control methods, which shall include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated.

(5) **Odors.** Any person who shall cause or allow the generation of any odor from any source or activity which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

(6) **Emissions detrimental to persons or property.** No person shall cause or allow the emission of any air contaminant from any source if it is detrimental to the health, safety, or welfare of any person, or causes damage to property or business.

(7) **Sulfur dioxide.** No person shall cause or allow the emission of a gas containing sulfur dioxide from any emissions unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen for combustion sources, and based on the average of any period of sixty consecutive minutes, except:

When the owner or operator of an emissions unit supplies emission data and can demonstrate to the permitting authority that there is no feasible method of reducing the concentration to less than one thousand ppm (on a dry basis, corrected to seven percent oxygen for combustion sources) and that the state and federal ambient air quality standards for sulfur dioxide will not be exceeded. In such cases, the permitting authority may require specific ambient air monitoring stations be established, operated, and maintained by the owner or operator at mutually approved locations. All sampling results will be made available upon request and a monthly summary will be submitted to the permitting authority.

(8) **Concealment and masking.** No person shall cause or allow the installation or use of any means which conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this chapter.

(9) **Fugitive dust.**

(a) The owner or operator of a source or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions.

(b) The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by ((~~EPA~~)) test method 5 in Appendix A to 40 C.F.R. Part 60, ((~~(in effect on July 1, 2012)~~)) or approved procedures contained in "*Source Test Manual - Procedures For Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements ((~~adopted by reference~~)) in WAC 173-400-075 (40 C.F.R. Part 63, subpart EEE) and WAC 173-400-115 (40 C.F.R. Part 60, subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "*Source Test Manual - Procedures For Compliance Testing*," state of

Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (((~~in effect on July 1, 2010~~))) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (((~~in effect on January 30, 2001~~))) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, subpart Ea or subpart Eb (((~~in effect on July 1, 2010~~))); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, subpart AAAA (((~~in effect on July 1, 2010~~))); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60, subparts Ea (((~~in effect on July 1, 2010~~))), Eb (((~~in effect on July 1, 2010~~))), and AAAA (((~~in effect on July 1, 2010~~))), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (((~~in effect on July 1, 2010~~)));

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other

forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) ((~~(in effect on July 1, 2010)~~)).

(viii) *Materials recovery units.* Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators.* Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 ((~~(in effect on July 1, 2010)~~)).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 C.F.R. 60.2265 ((~~(in effect on July 1, 2010)~~)).

(xi) *Rack, part, and drum reclamation units.* See 40 C.F.R. 60.2265 ((~~(in effect on July 1, 2010)~~)).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 C.F.R. Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) ((~~(in effect on July 1, 2010)~~)).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 C.F.R. Part 60, subpart O (Standards of Performance for Sewage Treatment Plants) ((~~(in effect on July 1, 2010)~~)).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815((~~, in effect on July 1, 2010~~))).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 ((~~(in effect on July 1, 2010)~~)) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, subpart CCCC ((~~by reference~~)).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875((~~, in effect on July 1, 2010, which is adopted by reference~~)). The federal rule contains these major components:

• Increments of progress towards compliance in 60.2575 through 60.2630;

• Waste management plan requirements in 60.2620 through 60.2630;

• Operator training and qualification requirements in 60.2635 through 60.2665;

• Emission limitations and operating limits in 60.2670 through 60.2685;

• Performance testing requirements in 60.2690 through 60.2725;

• Initial compliance requirements in 60.2700 through 60.2725;

• Continuous compliance requirements in 60.2710 through 60.2725;

• Monitoring requirements in 60.2730 through 60.2735;

• Recordkeeping and reporting requirements in 60.2740 through 60.2800;

• Title V operating permits requirements in 60.2805;

• Air curtain incinerator requirements in 60.2810 through 60.2870;

• Definitions in 60.2875; and

• Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted ((~~by reference~~)). Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, begin-

ning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999.

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals.

Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 ((~~(in effect on July 1, 2012)~~)).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 ((~~(in effect on July 1, 2012)~~)) combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 ((~~(in effect on July 1, 2012)~~)).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 ((~~(in effect on July 1, 2012)~~)).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 ((~~(in effect on July 1, 2012)~~)), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, subpart AAAA ((~~(in effect on July 1, 2012)~~)).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 ((~~(in effect on July 1, 2012)~~)) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 ((~~(in effect on July 1, 2012)~~)) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 ((~~(in effect on July 1, 2012)~~)).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) ((~~(in effect on July 1, 2012)~~)) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) ((~~(in effect on July 1, 2012)~~)) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 ((~~(in effect on July 1, 2012), which is adopted by reference~~)).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 ((~~(in effect on July 1, 2012)~~)).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, subpart BBBB ((~~(in effect on February 5, 2001)~~)) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, subpart HHH.

(7) **Sewage sludge incineration units** constructed on or before October 14, 2010. Sewage sludge incineration units constructed on or before October 14, 2010, must comply with 40 C.F.R. Part 62, subpart LLL if the final rule is published in the Federal Register on or before March 16, 2016.

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

WAC 173-400-060 Emission standards for general process units. General process units are required to meet all applicable provisions of WAC 173-400-040 and, no person shall cause or allow the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter at standard conditions (0.1 grain/dscf) of exhaust gas. ((~~EPA~~)) Test methods ((~~(in effect on February 20, 2001)~~)) from 40 C.F.R. Parts 51, 60, 61, and 63 and any other approved test procedures ((~~which are contained~~)) in ecology's "*Source Test Manual - Procedures For Compliance Testing*" as of ((~~July 12, 1990~~)) September 20, 2004, will be used to determine compliance.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.**

(a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD) as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for

the same specific times each day and the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) **Grain elevators.**

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Catalytic cracking units.**

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) **Other wood waste burners.**

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 C.F.R. Part 60, subpart DDDD) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) **Sulfuric acid plants.**

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H_2SO_4, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H_2SO_4.

(8) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. ((~~All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on July 1, 2000.~~))

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submittal of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or

cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 C.F.R. Part 61 and Appendices ((~~in effect on July 1, 2012,~~)) are adopted ((~~by reference~~)) (WAC 173-400-025). The term "administrator" in 40 C.F.R. Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 C.F.R. Parts 61, 62, 63 and 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 C.F.R. Parts 51, 60, 61, 62, 63 and 65, as applicable.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Submit reports required by 40 C.F.R. Parts 61 and 63 to the permitting authority, unless otherwise instructed.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

((~~Adopt by reference.~~

~~(a) **Major sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices in effect on July 1, 2012, as they apply to major sources of hazardous air pollutants are adopted by reference, except for Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities, as it applies to nonmajor sources and as specified under (b), (c), and (d) of this subsection.~~)) Adoption of federal rules.

(a) The term "administrator" in 40 C.F.R. Part 63 includes the permitting authority.

(b) ((~~**Area sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices in effect on July 1, 2012, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:~~

~~(i) Subpart EEEEEE, Primary Copper Smelting;~~

~~(ii) Subpart FFFFFF, Secondary Copper Smelting;~~

~~(iii) Subpart GGGGGG, Primary Nonferrous Metal;~~

~~(iv) Subpart SSSSSS, Pressed and Blown Glass Manufacturing;~~

~~(v) Subpart YYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);~~

~~(vi) Subpart EEE, Hazardous Waste Incineration;~~

~~(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;~~

~~(viii) Subpart LLL, Portland Cement;~~

~~(ix) Subpart X, Secondary Lead Smelting;~~

~~(x) MMMMMM, Carbon black production;~~

~~(xi) NNNNNN, Chromium compounds; and~~

~~(xii) VVVVVV, Chemical manufacturing for synthetic minors.~~

~~(xiii) EEEEEEE, Gold Mine Ore Processing and Production.~~

~~(c) The area source rules in 40 C.F.R. Part 63 and appendices in effect on July 1, 2012, (except subpart JJJJJJ) are adopted by reference as they apply to a stationary source located at a chapter 401 source subject to chapter 173-401 WAC, operating permit regulation.~~

~~(d) 40 C.F.R. Part 63, Subpart JJJJJJ: Industrial, Commercial and Institutional Boilers, is not adopted by reference.~~

~~(e) 40 C.F.R. Part 63, Subpart DDDDD - National emission for major sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, is not adopted by reference.~~)) **Major sources of hazardous air pollutants.** 40 C.F.R. Part 63 and Appendices are adopted as they apply to major sources of hazardous air pollutants.

(c)(i) **Nonmajor sources of hazardous air pollutants (area source rules).** The stationary sources affected by the following subparts of 40 C.F.R. Part 63 are subject to chapter 173-401 WAC (Operating permit regulation). These subparts of 40 C.F.R. Part 63 and Appendices are adopted (WAC 173-400-025):

(A) Subpart X, Secondary lead smelting;

(B) Subpart EEE, Hazardous waste incineration;

(C) Subpart LLL, Portland cement;

(D) Subpart IIIII, Mercury cell chlor-alkali plants;

(E) Subpart YYYYY, Stainless and nonstainless steel manufacturing (electric arc furnace);

(F) Subpart EEEEEE, Primary copper smelting;

(G) Subpart FFFFFF, Secondary copper smelting;

(H) Subpart GGGGGG, Primary nonferrous metal;

(I) Subpart MMMMMM, Carbon black production;

(J) Subpart NNNNNN, Chromium compounds;

(K) Subpart SSSSSS, Pressed and blown glass manufacturing;

(L) Subpart VVVVVV, Chemical manufacturing for synthetic minors; and

(M) Subpart EEEEEEE, Gold mine ore processing and production.

(ii) 40 C.F.R. Part 63 and Appendices are adopted (WAC 173-400-025) as they apply to a stationary source located at a source subject to chapter 173-401 WAC (Operating permit regulation).

(7) **Consolidated ((~~requirements for the~~)) federal air rule (synthetic organic chemical manufacturing industry).** 40 C.F.R. Part 65((~~, in effect on July 1, 2012,~~)) is adopted ((~~by reference~~)) (WAC 173-400-025).

(8) **Emission standards for perchloroethylene dry cleaners.**

(a) **Applicability.**

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1.

PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 C.F.R. Part 63, subpart M (((~~(in effect on July 1, 2012)~~))).

(iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) **Operations and maintenance record.**

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) **General operations and maintenance requirements.**

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2.

Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

(e) **Inspection.**

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3 and Table 4:

TABLE 3.

Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4.

Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

(ii) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of perchloroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iv) The dry cleaning system must be inspected while it is operating.

(v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(f) **Repair.**

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) **Requirements for systems with refrigerated condensers.** A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) **Requirements for systems with carbon adsorbers.** A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

AMENDATORY SECTION (Amending WSR 05-03-033, filed 1/10/05, effective 2/10/05)

WAC 173-400-100 Source classifications. (1) **Source classification list.** In counties without a local authority, or for sources under the jurisdiction of ecology, the owner or operator of each source within the following source categories shall register the source with ecology:

(a) Agricultural chemical facilities engaging in the manufacturing of liquid or dry fertilizers or pesticides;

(b) Agricultural drying and dehydrating operations;

(c) Any category of stationary source that includes an emissions unit subject to a new source performance standard (NSPS) under 40 C.F.R. Part 60, other than subpart AAA (Standards of Performance for New Residential Wood Heaters);

(d) Any stationary source, that includes an emissions unit subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 C.F.R. Part 61, other than:

(i) Subpart M (National Emission Standard for Asbestos); or

(ii) Sources or emission units emitting only radionuclides, which are required to obtain a license under WAC 246-247-060, and are subject to 40 C.F.R. Part 61, subparts H and/or I, and that are not subject to any other part of 40 C.F.R. Parts 61, 62, or 63, or any other parts of this section;

(e) Any source, or emissions unit subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technology (MACT) standard) under 40 C.F.R. Part 63;

(f) Any source, stationary source or emission unit with an emission rate of one or more pollutants equal to or greater than an "emission threshold" defined in WAC 173-400-030;

(g) Asphalt and asphalt products production facilities;

(h) Brick and clay manufacturing plants, including tiles and ceramics;

(i) Casting facilities and foundries, ferrous and nonferrous;

(j) Cattle feedlots with operational facilities which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season;

(k) Chemical manufacturing plants;

(l) Composting operations, including commercial, industrial and municipal, but exempting residential composting activities;

(m) Concrete product manufacturers and ready mix and premix concrete plants;

(n) Crematoria or animal carcass incinerators;

(o) Dry cleaning plants;

(p) Materials handling and transfer facilities that generate fine particulate, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere;

(q) Flexible vinyl and urethane coating and printing operations;

(r) Grain, seed, animal feed, legume, and flour processing operations, and handling facilities;

(s) Hay cubers and pelletizers;

(t) Hazardous waste treatment and disposal facilities;

(u) Ink manufacturers;

(v) Insulation fiber manufacturers;

(w) Landfills, active and inactive, including covers, gas collections systems or flares;

(x) Metal plating and anodizing operations;

(y) Metallic and nonmetallic mineral processing plants, including rock crushing plants;

(z) Mills such as lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, or any combination thereof;

(aa) Mineralogical processing plants;

(bb) Other metallurgical processing plants;

(cc) Paper manufacturers;

(dd) Petroleum refineries;

(ee) Petroleum product blending operations;

(ff) Plastics and fiberglass product fabrication facilities;

(gg) Rendering plants;

(hh) Soil and groundwater remediation projects;

(ii) Surface coating manufacturers;

(jj) Surface coating operations including: Automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates;

(kk) Synthetic fiber production facilities;

(ll) Synthetic organic chemical manufacturing industries;

(mm) Tire recapping facilities;

(nn) Wastewater treatment plants;

(oo) Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability to EPA requirements under Sections 111 or 112 of Federal Clean Air Act.

(2) **Equipment classification list.** In counties without a local authority, the owner or operator of the following equipment shall register the source with ecology:

(a) Boilers, all solid and liquid fuel burning boilers with the exception of those utilized for residential heating;

(b) Boilers, all gas fired boilers above 10 million British thermal units per hour input;

(c) Chemical concentration evaporators;

(d) Degreasers of the cold or vapor type in which more than five percent of the solvent is comprised of halogens or such aromatic hydrocarbons as benzene, ethylbenzene, toluene or xylene;

(e) Ethylene oxide (ETO) sterilizers;

(f) Flares utilized to combust any gaseous material;

(g) Fuel burning equipment with a heat input of more than 1 million Btu per hour; except heating, air conditioning systems, or ventilating systems not designed to remove contaminants generated by or released from equipment;

(h) Incinerators designed for a capacity of one hundred pounds per hour or more;

(i) Ovens, burn-out and heat-treat;

(j) Stationary internal combustion engines and turbines rated at five hundred horsepower or more;

(k) Storage tanks for organic liquids associated with commercial or industrial facilities with capacities equal to or greater than 40,000 gallons;

(l) Vapor collection systems within commercial or industrial facilities;

(m) Waste oil burners above 0.5 mm Btu heat output;

(n) Woodwaste incinerators;

(o) Commercial and industrial solid waste incineration units subject to WAC 173-400-050(4);

(p) Small municipal waste combustion units subject to WAC 173-400-050(5).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information

deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved ((~~EPA~~)) test methods from 40 C.F.R. Parts 51, 60, 61 and 63 (((~~in effect on July 1, 2012~~))) or procedures contained in "*Source Test Manual - Procedures for Compliance Testing*," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 C.F.R. Part 51, Appendix P, Sections 3, 4 and 5 (((~~in effect on May 1, 2012~~))).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 C.F.R. Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems

(CEMS) required by 40 C.F.R. Parts 60, 61, 62, 63, or 75, or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 C.F.R. Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 C.F.R. Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 C.F.R. Part 60 ((~~in effect on May 1, 2012, and the U.S. Environmental Protection Agency's~~))<u>, and EPA's</u> "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval or permit. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(d) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (a) of this section, all continuous monitoring systems shall be in continuous operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(8) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

<u>AMENDATORY SECTION</u> (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations.

(1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) A complete application contains all the information necessary for processing the application. At a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the permitting authority to determine that the construction or modification will meet the requirements of WAC 173-400-113. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant

must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be issued until the following criteria are met as applicable:

(a) The requirements of WAC 173-400-112;

(b) The requirements of WAC 173-400-113;

(c) The requirements of WAC 173-400-117;

(d) The requirements of WAC 173-400-171;

(e) The requirements of WAC 173-400-200 and 173-400-205;

(f) The requirements of WAC 173-400-700 through 173-400-750;

(g) The requirements of WAC 173-400-800 through 173-400-860;

(h) The requirements of chapter 173-460 WAC; and

(i) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - Time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source, as defined in WAC 173-400-810, in a nonattainment area or a major modification, as defined in WAC 173-400-810, of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commence construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard set by regulation or rule;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-112, 173-400-113, 173-400-720, 173-400-830, and 173-460-040, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) The applicant must consider the criteria in 40 C.F.R. 52.21 (r)(4) ((~~as adopted by reference in WAC 173-400-720~~)) or 173-400-830(3), as applicable, when determining which new source review approvals are required.

(9) Fees. Chapter 173-455 WAC lists the required fees payable to ecology for various permit actions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) **Adoption ((~~by reference~~)) of federal rules.**

(a) 40 C.F.R. Part 60 and Appendices ((~~in effect on August 14, 2012,~~)) are adopted ((~~by reference~~)) (WAC 173-400-025). Exceptions are listed in (b) ((~~and (c)~~)) of this subsection.

(b) ((~~40 C.F.R. Part 60, Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (December 23, 2011), is not adopted by reference.~~

~~(c)~~)) Exceptions to adopting 40 C.F.R. Part 60 ((~~by reference~~)).

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted ((~~by reference~~)):

(A) 40 C.F.R. 60.5 (determination of construction or modification);

(B) 40 C.F.R. 60.6 (review of plans);

(C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, ((~~HHHH~~)) MMMM, UUUU (emission guidelines); and

(D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

AMENDATORY SECTION (Amending WSR 11-17-037, filed 8/10/11, effective 9/10/11)

WAC 173-400-116 Increment protection. This section takes effect on the effective date of EPA's incorporation of this section into the Washington state implementation plan.

(1) Ecology will periodically review increment consumption. Within sixty days of the time that information becomes available to ecology that an applicable increment is or may be violated, ecology will review the state implementation plan for its adequacy to protect the increment from being exceeded. The plan will be revised to correct any inadequacies identified or to correct the increment violation. Any changes to the state implementation plan resulting from the review will be subject to public involvement in accordance with WAC 173-400-171 and EPA approval.

(2) PSD increments are published in 40 C.F.R. 52.21(c) ((~~as adopted by reference in WAC 173-400-720 (4)(a)(iv)~~)).

(3) Exclusions from increment consumption. The following concentrations are excluded when determining increment consumption:

(a) Concentrations of particulate matter, PM-10, or PM-2.5, attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(b) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(c) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources, which are affected by a revision to the SIP approved by ((~~the administrator of the environmental protection agency~~)) EPA. Such a revision must:

(i) Specify the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed two years in duration unless a longer time is approved by ((~~the administrator~~)) EPA.

(ii) Specify that the time period for excluding certain contributions in accordance with (c)(i) of this subsection is not renewable;

(iii) Allow no emissions increase from a stationary source, which would:

(A) Impact a Class I area or an area where an applicable increment is known to be violated; or

(B) Cause or contribute to the violation of a national ambient air quality standard.

(iv) Require limitations to be in effect by the end of the time period specified in accordance with (c)(i) of this subsection, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality actions and to provide opportunities for the public to participate in those actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) **Applicability to prevention of significant deterioration, and relocation of portable sources.**

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) **Internet notice of application.**

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.

(b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, fax, or electronic mail during the fifteen-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) **Actions subject to a mandatory public comment period.**

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 C.F.R. Part 51 ((~~(in effect on May 1, 2012)~~)) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117; or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) An order to authorize a bubble; or

(h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) Any application or other action for which the permitting authority determines that there is significant public interest.

(4) **Advertising the mandatory public comment period.** Public notice of all applications, orders, or actions listed in subsection (3) of this section must be given by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal. This public notice can be published or given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be published or given before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice.

(5) **Information available for public review.** The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law((~~,~~)) including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(6) **Public notice components.**

(a) The notice must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(iv) The location where those documents made available for public inspection may be reviewed;

(v) A thirty-day period for submitting written comment to the permitting authority;

(vi) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

(vii) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan, permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval.

(7) **Length of the public comment period.**

(a) The public comment period must extend at least thirty days prior to any hearing.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) **Requesting a public hearing.** The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) **Setting the hearing date and providing hearing notice.** If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) **Notice of public hearing.**

(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) Give public hearing notice by prominent advertisement in the area affected by the proposal. Prominent advertisement may be by publication in a newspaper of general circulation in the area of the proposed action or other means of prominent advertisement in the area affected by the proposal; and

(ii) Mail the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) In the case of a permit action, the applicant must pay all publishing costs associated with meeting the requirements of this subsection.

(11) **Notifying the EPA.** The permitting authority must send a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(12) **Special requirements for ecology only actions.**

(a) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 C.F.R. 51.102 ((~~in effect on July 1, 2012~~)).

(13) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending WSR 91-05-064, filed 2/19/91, effective 3/22/91)

WAC 173-400-260 Conflict of interest. All board members and officials acting or voting on decisions affecting air pollution sources, must comply with the Federal Clean Air Act, as it pertains to conflict of interest((~~, and 40 C.F.R. 103(d) which is incorporated by reference~~)) (Section 128).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-710 Definitions. (1) For purposes of WAC 173-400-720 through 173-400-750 the definitions in 40 C.F.R. 52.21(b)((~~, adopted by reference in WAC 173-400-720 (4)(a)(iv), are to~~)) must be used((~~, except~~)). Exception: The definition of "secondary emissions" as defined in WAC 173-400-030 ((~~will~~)) must be used.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 C.F.R. 52.21 ((~~as adopted by reference is to~~)) must be interpreted to mean "stationary source" as defined in 40 C.F.R. 52.21 (b)(5). A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes, from a nonroad engine, or a nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k)(1) and 52.21 (p)(1) through (4); and

(vi) The following subparts of 40 C.F.R. 52.21((~~, in effect on August 13, 2012, which~~)) are adopted ((~~by reference~~)) (WAC 173-400-025). Exceptions are listed in (b)(i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p)(1) ((~~-~~)), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

(A) In 40 C.F.R. 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 C.F.R. 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 C.F.R. 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator

elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) A description of the project;

(b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

(iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.

(iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r)(6)(iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

(a) The name, address and telephone number of the major stationary source;

(b) The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and

(c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:

(a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r)(6)(vi)(b) of this subsection, and not also within the meaning of (r)(6)(vi)(a) of this subsection, then the provisions of (r)(6)(vi)(ii) through (v) of this subsection do not apply to the project."

(E) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon

a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

(F) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

(G) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

(H) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

(I) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

(J) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) 40 C.F.R. 52.21 (r)(2) is not adopted ((~~by reference~~)).

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) **Application submittal.**

(a) The applicant shall submit an application that provides complete information necessary for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for the initial request, renewal or expiration of a PAL under 40 C.F.R. 52.21(aa) shall be done as provided in 40 C.F.R. 52.21 (aa)(3) ((**-**)) through (5)((~~, which is adopted by reference in WAC 173-400-720 (4)(a)(iv), except public~~)). Exception: Public participation must comply with WAC 173-400-740.

(2) **Application processing.**

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) As expeditiously as possible after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) Within one year of the date of receipt of the complete application and as expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determination to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) **Appeals.** A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 C.F.R. 124.13 and 40 C.F.R. 124.19.

(5) **Construction time limitations.**

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 C.F.R. Part 51 ((~~(as in effect on May 1, 2012)~~)) as part of review of air quality impacts.

(2) **Notification of the public.** As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public by:

(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4). The date the public notice is published in the newspaper starts the required thirty-day comment period.

(ii) If ecology grants a request to extend the public comment period, the extension notice must also be published in a newspaper as noted above and a copy of the extension notice sent to the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) The applicant or other initiator of the action must pay the cost of providing public notice.

(c) Send a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Send a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC;

(v) Individuals or organizations who request a copy; and

(vi) The location for public inspection of material required under (a) of this subsection.

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

(i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;

(l) The length of the public comment period in the event of a public hearing;

(m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination must be made within one year of receipt of a complete application and must include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall mail a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal;

(ii) Other individuals who requested notification of PSD permits.

(c) A copy of the final determination shall be sent to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC;

(vi) Any person who commented on the preliminary determination; and

(vii) The location for public inspection of material required under subsection (2)(a) of this section.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-810 Major stationary source and major modification definitions. The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability ((~~Limit which are adopted by reference in~~)) Limitation (WAC 173-400-850), then that definition ((~~is to~~)) must be used for purposes of the Plant Wide Applicability ((~~Limit~~)) Limitation program.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by ((~~the administrator~~)) EPA, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that ((~~the administrator~~)) EPA proposed or promulgated under 40 C.F.R. Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the

baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major sta-

tionary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(7)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by ((~~the administrator~~)) EPA);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the ((~~act~~)) Federal Clean Air Act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or ((~~section~~)) 40 C.F.R. 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by ((~~the administrator~~)) EPA implementing 40 C.F.R. 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or 40 C.F.R. 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 C.F.R. Part 51, Appendix S ((~~adopted by reference in WAC 173-400-850~~)) shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to

sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 C.F.R. 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 or in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by ((~~the administrator~~)) EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.165, or a program that implements 40 C.F.R. Part 51, Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other

information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by ((~~the administrator~~)) EPA and incorporated into the plan to implement the requirements of 40 C.F.R. 51.166, or under the program in 40 C.F.R. 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b)(i) through (iii) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an

alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Reviewing authority means "permitting authority" as defined in WAC 173-400-030.

(27) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided ((~~the administrator~~)) EPA has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(28) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(29) Source and stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(30) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(31) Best available control technology (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measure-

ment methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The permitting authority has determined, based on review of an analysis performed by the owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for Source Categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source is major or for which the existing source is major and the proposed modification is a major modification.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program under 40 C.F.R. 52.21 delegated to ecology by EPA Region 10, while such delegated program remains in effect. The proposed new major stationary source or major modification will comply with the PSD program in WAC 173-400-700 through 173-400-750 for all air contaminants for which the area has not been designated nonattainment when that PSD program has been approved into the Washington SIP.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where ((~~the administrator of the environmental protection agency~~)) EPA has granted a NO_X waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where ((~~the administrator of the~~)) EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 C.F.R. 51.165, or the requirements of 40 C.F.R. Part 51, Appendix S, as applicable, shall apply to the source or modification as though construction had not yet commenced on the source or modification. 40 C.F.R. Part 51, Appendix S shall not apply to a new or modified source for which enforceable limitations are established after WAC 173-400-800 through 173-400-850 have been approved into Washington's SIP.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-840 Emission offset requirements. (1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1.1:1;

(b) In any moderate nonattainment area for ozone - 1.15:1;

(c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 C.F.R. 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for the incremental increase in allowable emissions occurring during startup and shutdown operations at the new or modified emission units subject to nonattainment area major new source review. The incremental increase is the difference between the allowable emissions during normal operation and the allowable emissions for startup and shutdown contained in the nonattainment new source review approval.

(8) Emission offsets including those described in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51, subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(9) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). This document is also available from ((~~Mr. Ted Creekmore,~~)) Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability ((~~limit~~)) Limitations (PAL) program ((~~contained~~)) in Section IV.K of Appendix S (Emission Offset Interpretive Ruling) to 40 C.F.R. Part 51, ((~~Appendix S, Emission Offset Ruling, as of May 1, 2012,~~)) is adopted ((~~by reference~~)) with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 C.F.R. 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

AMENDATORY SECTION (Amending WSR 12-24-027, filed 11/28/12, effective 12/29/12)

WAC 173-400-930 Emergency engines. (1) **Applicability.**

(a) This section applies statewide except where a permitting authority has not adopted this section in rule.

(b) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

(c) This section is not applicable to emergency engines proposed to be installed as part of a new major stationary source, as defined in WAC 173-400-710 and 173-400-810, or major modification, as defined in WAC 173-400-710 and 173-400-810.

(d) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

(e) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

(f) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

(g) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines((~~, contained~~)) in 40 C.F.R. ((~~Part~~)) 89.112 Table 1 and 40 C.F.R. ((~~Part~~)) 1039.102 Tables 6 and 7, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing or other nonemergency use.

(3) **Definitions.**

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

AMENDATORY SECTION (Amending WSR 12-24-033, filed 11/28/12, effective 12/29/12)

WAC 173-423-070 Emission standards, warranty, recall and other California provisions adopted by reference. Each manufacturer and each new 2009 and subsequent model year passenger car, light duty truck and medium duty passenger vehicle subject to this chapter shall comply with each applicable standard set forth in Table 070(1) and incorporated by reference:

Table 070(1)
California Code of Regulations (CCR)
Title 13
Provisions Incorporated by Reference
Effective in Washington starting January 14, 2009

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Chapter 1 Motor Vehicle Pollution Control Devices		
Article 1 General Provisions		
Section 1900	Definitions	((~~8/7/12~~)) 10/8/15
Section 1956.8 (g) and (h)	Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy Duty Engines and Vehicles	((~~8/7/12~~)) 12/5/14
Section 1960.1	Exhaust Emission Standards and Test Procedures - 1981 and through 2006 Model Passenger Cars, Light-Duty and Medium-Duty Vehicles	((~~8/7/12~~)) 12/31/12
Section 1961	Exhaust Emission Standards and Test Procedures - 2004 through 2019 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/7/12~~)) 12/31/12
Section 1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2009 through 2016 Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	8/7/12
Section 1961.2	Exhaust Emission Standards and Test Procedures - 2015 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/7/12~~)) 10/8/15
Section 1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles	((~~8/8/12~~)) 12/31/12
Section 1965	Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles	((~~8/7/12~~)) 10/8/15
Section 1968.2	Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((~~8/7/12~~)) 7/31/13
Section 1968.5	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines	((~~8/7/12~~)) 7/31/13
Section 1976	Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions	((~~8/7/12~~)) 10/8/15

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 1978	Standards and Test Procedures for Vehicle Refueling Emissions	((~~8/7/12~~)) 10/8/15
Article 6 Emission Control System Warranty		
Section 2035	Purpose, Applicability and Definitions	11/9/07
Section 2036	Defects Warranty Requirements for 1979 through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles	((~~5/15/99~~)) 12/5/14
Section 2037	Defects Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	((~~8/7/12~~)) 12/5/14
Section 2038	Performance Warranty Requirements for 1990 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles and Motor Vehicle Engines Used in Such Vehicles	8/7/12
Section 2039	Emission Control System Warranty Statement	12/26/90
Section 2040	Vehicle Owner Obligations	12/26/90
Section 2046	Defective Catalyst	2/15/79
Chapter 2 Enforcement of Vehicle Emission Standards and Enforcement Testing		
Article 2 Enforcement of New and In-Use Vehicle Standards		
Section 2109	New Vehicle Recall Provisions	12/30/83
Article 2.1 Procedures for In-Use Vehicle Voluntary and Influenced Recalls		
Section 2111	Applicability	12/8/10
Section 2112	Definitions	((~~8/7/12~~)) 12/5/14
	Appendix A to Article 2.1	8/16/09
Section 2113	Initiation and Approval of Voluntary and Influenced Emission-Related Recalls	1/26/95
Section 2114	Voluntary and Influenced Recall Plans	11/27/99
Section 2115	Eligibility for Repair	1/26/95
Section 2116	Repair Label	1/26/95
Section 2117	Proof of Correction Certificate	1/26/95
Section 2118	Notification	1/26/95
Section 2119	Recordkeeping and Reporting Requirements	11/27/99
Section 2120	Other Requirements Not Waived	1/26/95
Article 2.2 Procedures for In-Use Vehicle Ordered Recalls		
Section 2122	General Provisions	12/8/10
Section 2123	Initiation and Notification of Ordered Emission-Related Recalls	1/26/95
Section 2124	Availability of Public Hearing	1/26/95
Section 2125	Ordered Recall Plan	1/26/95
Section 2126	Approval and Implementation of Recall Plan	1/26/95
Section 2127	Notification of Owners	1/26/95
Section 2128	Repair Label	1/26/95
Section 2129	Proof of Correction Certificate	1/26/95

Title 13 CCR Division 3 Air Resources Board	Title	California Effective Date
Section 2130	Capture Rates and Alternative Measures	11/27/99
Section 2131	Preliminary Tests	1/26/95
Section 2132	Communication with Repair Personnel	1/26/95
Section 2133	Recordkeeping and Reporting Requirements	1/26/95
Section 2135	Extension of Time	1/26/95
Article 2.4 Procedures for Reporting Failure of Emission-Related Components		
Section 2141	General Provisions	12/8/10
Section 2142	Alternative Procedures	2/23/90
Section 2143	Failure Levels Triggering Recall	11/27/99
Section 2144	Emission Warranty Information Report	11/27/99
Section 2145	Field Information Report	8/7/12
Section 2146	Emissions Information Report	11/27/99
Section 2147	Demonstration of Compliance with Emission Standards	((~~8/7/12~~)) 12/5/14
Section 2148	Evaluation of Need for Recall	11/27/99
Section 2149	Notification and Subsequent Action	2/23/90
Chapter 4.4 Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks		
Section 2235	Requirements	8/8/12

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-020 Applicability. (1) The provisions of this chapter apply to all areas of the state of Washington.

(2) All federal regulations referenced in this regulation are adopted as they exist on ((~~August 3, 2013~~)) January 1, 2016.

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-150 Ambient air quality standard for ozone. (1) **Standard for ozone.** The three-year average of the annual fourth highest daily maximum eight-hour average concentration of ozone in the ambient air must not exceed ((~~0.075~~)) 0.070 ppmv.

(2) **Measurement method.** The levels of ozone in the ambient air must be measured by:

(a) A FRM based on 40 C.F.R. Part 50, Appendix D and designated according to 40 C.F.R. Part 53; or

(b) A FEM designated according to 40 C.F.R. Part 53.

(3) **Interpretation method.** The interpretation method found in 40 C.F.R. Part 50, Appendix ((~~P~~)) U must be followed.

AMENDATORY SECTION (Amending WSR 13-24-010, filed 11/21/13, effective 12/22/13)

WAC 173-476-900 Table of standards.

Disclaimer: This table is provided as an overview. See complete rule for more detail.

Pollutant		Averaging Time	Level	Remarks	Measurement Method	Interpretation Method
Particle Pollution	PM-10	24-hour	150 $\mu g/m^3$	Not to be exceeded more than once per year averaged over 3 years	40 C.F.R. Part 50, Appendix J	40 C.F.R. Part 50, Appendix K
	PM-2.5	Annual	12.0 $\mu g/m^3$	Annual mean, averaged over 3 years	40 C.F.R. Part 50, Appendix L	40 C.F.R. Part 50, Appendix N
		24-hour	35 $\mu g/m^3$	98th percentile, averaged over 3 years		

Pollutant	Averaging Time	Level	Remarks	Measurement Method	Interpretation Method
Lead	Rolling 3-month average	0.15 $\mu g/m^3$	Not to be exceeded	40 C.F.R. Part 50, Appendix G	40 C.F.R. Part 50, Appendix R
Sulfur Dioxide	Annual	0.02 ppmv	Not to be exceeded in a calendar year	40 C.F.R. Part 50, Appendix A-1 or A-2	WAC 173-476-130(3)
	24-hour	0.14 ppmv	Not to be exceeded more than once per year		
	3-hour	0.5 ppmv	Not to be exceeded more than once per year		
	1-hour	75 ppbv	99th percentile of 1-hour daily maximum concentrations, averaged over 3 years		
Nitrogen Dioxide	Annual	53 ppbv	Annual Mean	40 C.F.R. Part 50, Appendix F	40 C.F.R. Part 50, Appendix S
	1-hour	100 ppbv	98th percentile of 1-hour daily maximum concentrations, averaged over 3 years		
Ozone	8-hour	((~~0.075~~)) 0.070 ppmv	Annual fourth-highest daily maximum 8-hr concentration, averaged over 3 years	40 C.F.R. Part 50, Appendix D	40 C.F.R. Part 50, Appendix ((~~P~~)) U
Carbon Monoxide	8-hour	9 ppmv	Not to be exceeded more than once per year	40 C.F.R. Part 50, Appendix C	WAC 173-476-160(3)
	1-hour	35 ppmv			

WSR 16-06-072
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Filed February 26, 2016, 9:25 a.m.]

Earlier this year, the department of ecology (ecology) proposed the clean air rule that would cap and reduce carbon pollution in Washington state. The proposed rule would help slow climate change and limit the projected effects on our state's coastal communities, agricultural industries, and drinking water supplies.

Since releasing the proposed rule, ecology has actively sought feedback that would help inform and shape the final rule. Ecology met with numerous groups and stakeholders and received helpful and constructive ideas on how to best approach the proposed rule.

Some of the updates and refinements now being considered for the proposed rule are significant, and as a result, ecology expects the updates will substantially alter the initial proposed rule. Because of this, ecology is withdrawing the proposed rule making (CR-102 proposed rule making for chapter 173-442 WAC, Clean air rule, and amendments to existing rule, chapter 173-441 WAC, Reporting of emissions of greenhouse gases, filed January 5, 2016, WSR 16-02-101) which will allow additional time for review, refinement, and feedback.

Ecology intends to continue working with stakeholders and updating the proposed rule language. We expect to file a new proposed rule in spring 2016 and finalize the rule in late summer 2016.

Polly Zehm
Deputy Director

WSR 16-06-082
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed February 26, 2016, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-046.

Title of Rule and Other Identifying Information: Revisions to the department of early learning's (DEL) disclosure of public records chapter, specifically WAC 170-01-0020 Definitions, 170-01-0030 Description of the department of early learning, 170-01-0120 How to make a public records request, 170-01-0210 What DEL considers a reasonable time estimate, 170-01-0220 Reasons for DEL extending the time needed to fill a public records request, and 170-01-0270 DEL reviews of records request denials.

Hearing Location(s): Tacoma Public Library, Main Branch, Olympic Room, 1102 Tacoma Avenue South, Tacoma, WA 98402, on April 5, 2016, at 6:30 p.m.; and at the

Spokane Public Library, Downtown Branch, Room 1A, 906 West Main Avenue, Spokane, WA 99201, on April 6, 2016, at 6:30 p.m.

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

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by April 6, 2016.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by April 28, 2016, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions update agency contact information, correct grammatical style and change the definition of "public record" to better align with the Public Records Act.

Reasons Supporting Proposal: Adopting the proposed rules keeps the chapter up-to-date and completes necessary corrections.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: James DeHart, Public Records Officer, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4385; Implementation and Enforcement: DEL, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

February 26, 2016
Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0020 Definitions. The definitions set forth in chapter 42.56 RCW shall apply to this chapter. Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section.

"DEL" or "department" means the department of early learning. Where appropriate, DEL also may refer to the officials and employees of the department of early learning.

"Disclosure" means inspection and/or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes ((~~anything prepared, owned, used or retained by the agency and can include agency publications, online information posted on internet sites owned or controlled by the agency, child care career and wage ladder information, ECEAP records, subsidy information, grants, requests for proposals and contract information, documents contained in licensing files, interagency communication including service level agreements and memorandums of understanding, e-mails, letters, memos, licensing complaint reports in CAMIS/FAMLINK, service episode records, records held by contractors if they related to agency's function or action, certain electronic records, and other records not readily available to the public such as old manuals or training materials. These records can be written, recorded or electronic.~~

~~To be a public record, a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41)~~)) any writing, as defined in RCW 42.56.010, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" means the designated person for the department who oversees all records requests. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0030 Description of the department of early learning. (1) DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.

(2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.

(3) The administrative office of the department of early learning is located in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325.

(4) Field offices ((~~exist in Aberdeen, Bellevue, Bellingham, Bremerton, Everett, Kennewick, Kelso, Kent, Mount Vernon, Othello, Port Angeles, Seattle, Spokane, Tacoma, Tumwater, Vancouver, Wenatchee, and Yakima~~)) are located throughout the state and contact information can be found on DEL's web site.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0120 How to make a public records request. (1) Public records requests should be made directly to the DEL public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by e-mail to public.records@del.wa.gov, by fax to ((~~360-413-3482~~)) 360-725-4925 or mail. Requests may be delivered to: Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970.

(b) DEL's public records request form is on its web site.

(c) A written request without using the DEL public records request form should contain:

(i) Name of requestor;

(ii) Address of requestor;

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

(iv) The date on which the request was made;

(v) A sufficient description of the record requested; and

(vi) If the information being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0210 What DEL considers a reasonable time estimate. DEL will roughly calculate the time it will take to fill the request. There is no standard amount of time for fulfilling a request, so reasonable estimates may vary. The estimates are based upon:

(1) The size of the record requested. A large request generally will take more time than a small request.

(2) The location or locations where requested records may be. Records may be stored at different DEL offices, or at state records storage facilities.

(3) The case load of the person filling the request. While providing public records is an essential function of the agency, it is not required to abandon its other, nonpublic records functions.

((~~Example: A child care licensor who fills the request must work the public records request around their other duties monitoring and licensing facilities.~~))

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request. DEL may need to extend the time needed to fill a public records request beyond the five days in order to:

(1) Locate and gather the information requested;

(2) Notify an individual or organization affected by the request, and to give them an opportunity to object if allowed by law;

(3) Determine whether: The information requested is exempt from disclosure; all or part of the request can be released; portions of the record must be redacted; or

(4) Wait for response after DEL has already contacted the requestor to clarify the intent, scope or specifics of the request. For example, if a request is objectively unclear, DEL will attempt to clarify. If the requestor fails to clarify the request within thirty days of the agency's request, the agency ((~~may~~)) will consider the request abandoned((~~. If the agency considers the request abandoned, it will send a closing letter to the requestor~~)), close the request and notify the requestor in writing.

DEL will notify the requestor in writing if an extension is needed.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0270 DEL reviews of records request denials. (1) All review requests must be in writing (letter, fax or e-mail). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

(2) If DEL denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

((~~(1)~~)) (a) Asking the public records officer for an internal DEL review.

((~~(2)~~)) After receiving a request for an internal review, the public records officer will refer the matter for review to the deputy director who may consult with other agency leaders. The denial will either be upheld or reversed within two business days after the receipt of the review request.

(b) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

((~~(3)~~)) (c) Asking for a judicial review.

((~~All review requests must be in writing (letter, fax or e-mail). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.~~

~~After receiving a request for an internal review, the public records officer will refer the matter for review to the agency communications manager who may consult with other agency leaders. The denial will either be upheld or reversed within two business days after the receipt of the review request.~~)) To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

WSR 16-06-083
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed February 26, 2016, 3:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-16-046.

Title of Rule and Other Identifying Information: Adding new sections WAC 170-290-0014, verifying information for provider payment, 170-290-0100 [170-290-0106], when provider payments start at application and reapplication, and 170-290-3670 [170-290-3675], when provider payments start at application and reapplication.

Seventy-Five Revised Sections:

Amended sections:

Part I. Introduction

WAC 170-290-0001 Purpose and intent, 170-290-0002 Scope of agency responsibilities, and 170-290-0003 Definitions.

Part II. Working Connections Child Care

Subtitle: Eligibility Requirements: WAC 170-290-0005 Eligibility, 170-290-0012 Verifying consumers' information, and 170-290-0020 Eligibility—Special circumstances.

Subtitle: Rights and Responsibilities: WAC 170-290-0025 Consumers' rights, 170-290-0030 Consumers' responsibilities, 170-290-0031 Notification of changes, 170-290-0032 Failure to report changes, and 170-290-0034 Providers' responsibilities.

Subtitle: Approved Activities: WAC 170-290-0040 Approved activities for applicants and consumers participating in WorkFirst, 170-290-0045 Approved activities for applicants and consumers not participating in WorkFirst, 170-290-0050 Additional requirements for self-employed WCCC consumers, and 170-290-0055 Receipt of benefits when not engaged in approved activities.

Subtitle: Income and Copayment Calculations: WAC 170-290-0060 Countable income, 170-290-0065 Calculation of income, 170-290-0070 Excluded income and deductions, 170-290-0075 Determining income eligibility and copayment amounts, 170-290-0082 Eligibility period, 170-290-0085 Change in copayment, and 170-290-0090 Minimum copayment.

Subtitle: Start Dates and Eligibility Period: WAC 170-290-0095 When WCCC benefits start, 170-290-0107 Denial of benefits—Date of redetermining eligibility, 170-290-0109 Reapplication, and 170-290-0110 Termination of and redetermining eligibility for benefits.

Subtitle: Notice: WAC 170-290-0115 Notice of payment changes.

Subtitle: Eligible Child Care Providers: WAC 170-290-0125 Eligible child care providers, 170-290-0130 In-home/relative providers—Eligibility, 170-290-0135 In-home/relative providers—Information provided to DSHS, 170-290-0138 In-home/relative providers—Responsibilities, 170-290-0139 In-home/relative providers—Electronic attendance records—Records retention, 170-290-0140 In-home/relative providers—Ineligibility, 170-290-0143 In-home/relative providers—Background checks—Required persons, 170-290-0150 In-home/relative providers—Background checks—Included information and sources, 170-290-0155 In-home/relative providers—Background checks—Subsequent steps, and 170-290-0167 In-home/relative providers—Background checks—Disqualified person living with the provider.

Subtitle: Subsidy Rates and Fees: WAC 170-290-0180 WCCC subsidy rates, 170-290-0190 WCCC authorized and additional payments—Determining units of care, 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, 170-290-0220 Special needs rates—Qualification and required documentation, 170-290-0225 Special needs rates—Licensed or certified child care facilities and seasonal day camps, 170-290-0230 Special needs rates—Licensed or certified family home child care providers, 170-290-0235 Special needs rates—In-home/relative providers, 170-290-0247 Field trip/quality enhancement fees, 170-290-0249 Nonstandard hours bonus, and 170-290-0250 Eligible provider capacity and payment.

Subtitle: Payment Discrepancies: WAC 170-290-0266 Payment discrepancies—Generally, 170-290-0267 Payment discrepancies—Provider underpayments, 170-290-0269 Payment discrepancies—Consumer underpayments, and 170-290-0271 Payment discrepancies—Consumer overpayments.

Subtitle: Administrative Hearings—WCCC: WAC 170-290-0280 Right to request an administrative hearing.

Part III. Seasonal Child Care

Subtitle: Eligibility Requirements: WAC 170-290-3520 Eligibility, 170-290-3530 Verifying consumers' and providers' information, 170-290-3550 Eligibility—Special circumstances for two-parent families, and 170-290-3555 Eligibility—Approved activities.

Subtitle: Rights and Responsibilities: WAC 170-290-3560 Consumers' rights, 170-290-3565 Consumers' responsibilities, 170-290-3566 Subsidized child care providers' responsibilities, 170-290-3570 Notification of changes, 170-290-3580 Failure to report changes, and 170-290-3590 DSHS's responsibilities to consumers.

Subtitle: Income and Copayment Calculations: WAC 170-290-3610 Countable income, 170-290-3630 Excluded income and deductions, 170-290-3640 Determining income eligibility and copayment, and 170-290-3650 Change in copayment.

Subtitle: Start Dates and Eligibility Period: WAC 170-290-3665 When SCC program subsidies start.

Subtitle: Notice: WAC 170-290-3730 When notice of payment changes is not required.

Subtitle: Eligible Providers and Rates: WAC 170-290-3750 Eligible child care providers, 170-290-3760 SCC subsidy rates, 170-290-3770 Authorized SCC payments, and 170-290-3800 Eligible provider capacity and payment.

Subtitle: Review Process: WAC 170-290-3840 New eligibility period.

Subtitle: Payment Discrepancies: WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies.

Hearing Location(s): Tacoma Public Library, Main Branch, Olympic Room, 1102 Tacoma Avenue South, Tacoma, WA 98402, on April 5, 2016, at 6:30 p.m.; and at the Spokane Public Library, Downtown Branch, Room 1A, 906 West Main Avenue, Spokane, WA 99201, on April 6, 2016, at 6:30 p.m.

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

Submit Written Comments to: Rules Coordinator, Department of Early Learning (DEL), P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by April 6, 2016.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by April 28, 2016, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The majority of revisions mainly focus on correcting outdated language and grammatical style for an anticipated clearer understanding of the rules. Additional revisions include specifically describing which applicants will receive priority in the event of a waitlist for services occurring and adopting a recommendation that separates child care subsidy eligibility from payment authorization for child care.

Reasons Supporting Proposal: Altogether, these proposed rules update and streamline efficiencies across the working connections child care and seasonal child care programs as well as improve agency coordination between DEL and the department of social and health services (DSHS) that fund and administer the programs, respectively.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL/DSHS, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

February 26, 2016
Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 15-01-033, filed 12/8/14, effective 1/8/15)

WAC 170-290-0001 Purpose and intent. (1) This chapter establishes the requirements for eligible families to receive subsidized child care through the working connections child care (WCCC) and seasonal child care (SCC) programs as administered by DSHS under applicable state and federal law, to the extent of available funds. WCCC administered through the early childhood education and assistance program (ECEAP) shall follow ECEAP performance standards and contracts. As used in chapter 170-290 WAC, "to the extent of available funds" includes one or more of the following:

(a) Limiting or closing enrollment;

(b) Establishing a priority list for new enrollees subject to applicable state and federal law. Priority list: Families participating in Early Headstart-Child Care Partnership program; families with children with special needs; teen parents; homeless families according to the McKinney-Vento Act; families receiving TANF; TANF families curing a sanction; and families that received WCCC/SCC within thirty days of application; or

(c) Creating and maintaining a waiting list.

(2) The purpose of WCCC, as provided in part II of this chapter, is to:

(a) Assist eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(3) The purpose of SCC, as provided in part III of this chapter, is to:

(a) Assist eligible families who are seasonally employed in agriculturally related work to pay for licensed child care; and

(b) Consider the health and safety of children while they are in care and receiving child care subsidies.

(4) No provision of this section shall be interpreted contrary to RCW 43.215.250.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-0002 Scope of agency responsibilities. DEL is designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds.

(1) The responsibilities of the department of early learning (DEL) include, but are not limited to:

(a) Determining child care subsidy policy for the WCCC and SCC programs((~~, including~~));

(b) Determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities((~~. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds; and~~

~~(b)~~));

(c) Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003((~~(7)~~)) (13), and for all licensed family ((~~child care providers~~)) homes.

(2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to((~~,~~)):

(a) Service delivery for the WCCC and SCC programs, including determining who is eligible for WCCC and SCC benefits((~~,~~));

(b) Authorizing payments for these programs, and managing payments made to providers that receive WCCC and SCC subsidies.

(3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Authorization" means the ((~~documentation that DSHS gives to providers specifying units of full-day, half-day or hourly child care a family may receive during their eligibility period, which may be adjusted based on the family's need for care or changes in eligibility~~)) transaction created by DSHS which allows the provider the ability to claim a payment for child care provided during a family's approved activities during the current certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved ((~~work~~)) activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care, whether provided under a voucher or contract, each month.

"Days" means calendar days unless otherwise specified.

"DEL" means the department of early learning.

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

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by ((~~an employee's pay stubs or DSHS employer verification form~~)) DSHS, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"In-home/relative provider" or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child not less than five years of age through twelve years of age who is attending kindergarten or elementary school.

((~~**"Seasonally available labor"** or~~)) **"Seasonally available agricultural related work"** means work that is ((~~available only in a specific season during part of the calendar year. The work is~~)) directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

"Self-employment" means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

"Waiting list" means a list of ((~~families who are currently working and waiting for child care subsidies when funding is not available to meet the requests from all eligible families~~)) applicants or reapplicants eligible to receive subsidy benefits but funding is not available.

"WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities ((~~that enable them to work, attend training, or enroll in educational programs~~)) outside the consumer's home.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0005 Eligibility. (1) ((~~**Parents.**~~)) To be eligible for WCCC, the person applying for benefits must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Nephew or niece;

(vi) Aunt;

(vii) Uncle;

(viii) Grandparent;

(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or

(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;

(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;

(e) Comply with any special circumstances that might affect WCCC eligibility under WAC 170-290-0020;

(f) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG). The consumer's eligibility shall end if the consumer's countable income is greater than two hundred percent of the FPG;

(g) Not have a monthly copayment that is higher than the state will pay for all eligible children in care;

(h) Complete the WCCC application and DSHS verification process regardless of other program benefits or services received; and

(i) Meet eligibility requirements for WCCC described in Part II of this chapter.

(2) **Children.** To be eligible for WCCC, the child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) Live in Washington state, and be:

(i) Less than ((~~age~~)) thirteen years of age; or

(ii) Less than ((~~age~~)) nineteen years of age, and:

(A) Have a verified special need, according WAC 170-290-0220; or

(B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must ((~~complete the DSHS application for WCCC benefits and~~)) provide all required information to DSHS to determine eligibility when((~~:~~

~~(a)~~)) the consumer initially applies ((~~for benefits; or~~

~~(b) The consumer~~)) or reapplies for benefits.

(2) A consumer must provide verification to DSHS to determine ((~~if he or she continues to qualify~~)) continued eligibility for benefits ((~~during his or her eligibility period~~)) when there is a change of circumstances under WAC 170-290-0031 during the eligibility period.

(3) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) A current WorkFirst individual responsibility plan (IRP) for consumers receiving TANF;

(b) Employer name, address, and phone number;

(c) State business registration and license, if self-employed;

(d) ((~~Work, school, or training schedule (when requesting child care for non-TANF activities);~~

~~(e)~~)) Hourly wage or salary;

((~~(f)~~)) (e) Either the:

(i) Gross income for the last three months;

(ii) Federal income tax return for the preceding calendar year; or

(iii) DSHS employment verification form;

((~~(g)~~)) (f) Monthly unearned income the ((~~consumer~~)) household receives, such as supplemental security income (SSI) benefits or child support ((~~or supplemental security income (SSI) benefits;~~

~~(h)~~)). Child support payment amounts are verified as follows:

(i) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;

(ii) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(iii) For applicants or consumers who have an informal verbal or written child support agreement, the amount as verified by the written agreement signed by the noncustodial parent (NCP).

(g) If the other parent is in the household, the same information for them;

((~~(i)~~)) (h) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005((~~;~~

~~(j) Name and phone number of the licensed child care provider; and~~

~~(k) For the in-home/relative child care provider, a:~~

~~(i) Completed and signed criminal background check form;~~

~~(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;~~

~~(iii) Legible copy of the proposed providers' valid Social Security card; and~~

~~(iv) All other information required by WAC 170-290-0135~~)).

(6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

(7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(8) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

NEW SECTION

WAC 170-290-0014 Verifying information for a provider's payment. (1) A consumer must provide all required information to DSHS to determine eligibility for payment to their provider.

(2) All verification that is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent.

(3) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(4) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

(a) Name and phone number of the licensed child care provider; and

(b) For the in-home/relative child care provider, a:

(i) Completed and signed criminal background check form;

(ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

(iii) Legible copy of the proposed provider's valid Social Security card; and

(iv) All other information required by WAC 170-290-0135.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0020 Eligibility—Special circumstances. (1) **Child care provided at the consumer's place of work.** A consumer is not eligible for WCCC benefits for his or her children when child care is provided at the same location where the consumer works.

(2) **Consumer's child care employment.**

(a) A consumer may be eligible for WCCC benefits ((~~during the time she or he works~~)) while working in a child care center ((~~but~~)) if the consumer does not provide direct care in the same classroom to ((~~his or her~~)) the consumer's children during work hours.

(b) A consumer is not eligible for WCCC benefits ((~~during the time she or he works~~)) while working in a family home child care where ((~~his or her~~)) the consumer's children are also receiving subsidized child care.

(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

(d) A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.

(3) **Two-parent family.**

(a) A consumer may be eligible for WCCC if ((~~he or she~~)) the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is working or participating in approved activities.

(b) If a consumer claims one parent is not able to care for the children the consumer must provide written documentation from ((~~a licensed professional~~)) an acceptable medical source (see WAC ((~~388-448-0020~~)) 388-449-0010) that states the:

(i) Reason the parent is not able to care for the children;

(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

(4) **Single-parent family.** A consumer is not eligible for WCCC benefits when ((~~he or she~~)) the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.

(5) **Legal guardians.**

(a) A legal guardian under WAC 170-290-0005 may receive WCCC benefits for ((~~his or her work or~~)) approved activities without ((~~his or her~~)) the spouse or live-in partner's availability to provide care being considered unless ((~~his or her~~)) the spouse or live-in partner is also named on the permanent custody order.

(b) Eligibility for WCCC benefits is based on the consumer's:

(i) Work or approved activities schedule((~~,~~));

(ii) The child's need for care((~~, and~~));

(iii) The child's income eligibility; and

(iv) Family size ((~~of one~~)) based on number of children under guardianship and needing care.

(c) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(6) **In loco parentis custodians.**

(a) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or step-parents.

(b) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she has:

(i) A written, signed agreement between the parent and the caregiver assuming custodial responsibility; or

(ii) Receives a TANF grant on behalf of the eligible child.

(c) Eligibility for WCCC benefits is based on ((~~his or her~~)) the consumer's:

(i) Work schedule((~~,~~));

(ii) The child's need for care((~~, and~~));

(iii) The child's income eligibility; and

(iv) Family size ((~~of one~~)) based on number of children under in loco parentis and needing care.

(d) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

(7) **WorkFirst sanction.**

(a) A consumer may be eligible for WCCC if ((~~he or she is a sanctioned WorkFirst participant and~~)) the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen ((~~his or her~~)) the consumer's WorkFirst case.

(b) A WorkFirst participant who loses ((~~his or her~~)) a TANF grant due to exceeding the federal time limit for receiving TANF may still be eligible for WCCC benefits under WAC 170-290-0055.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0025 Consumers' rights. When a consumer applies for or receives WCCC benefits, the consumer has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from ((~~his or her~~)) the application date per WAC 170-290-0095;

(3) Be informed, in writing, of ((~~his or her~~)) the consumer's legal rights and responsibilities related to WCCC benefits;

(4) Receive a written notice at least ten days before DSHS makes changes to lower or stop benefits except as stated in WAC ((~~170-290-0120~~)) 170-290-0115;

(5) Ask for an administrative hearing if ((~~he or she~~)) the consumer does not agree with DSHS about a decision per WAC 170-290-0280;

(6) Ask a supervisor or administrator to review a decision or action affecting the consumer's benefits without affecting the right to an administrative hearing;

(7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(8) Choose a provider as long as the provider meets the requirements in WAC 170-290-0125;

(9) Ask the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA) to come back at another time. A consumer does not have to let an investigator into his or her home. This request will not affect the consumer's eligibility for benefits. If the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect ((~~his or her~~)) the consumer's eligibility for benefits;

(10) Access ((~~his or her~~)) to the consumer's child at all times while the child is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed, certified, or license-exempt provider, or be made to pay for the difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care is higher than the maximum state rate;

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's registration fee and the state's maximum registration fee, when the provider's registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips. If the consumer requests, and the provider has a written policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider stops caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0030 Consumers' responsibilities. When a person applies for or receives WCCC benefits, the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 170-290-0125;

(3) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;

(4) In cases of overdue or past due copayments, the consumer, as a condition of maintaining ((~~his or her~~)) eligibility, must do one or more of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up;

(5) Only use WCCC benefits while the consumer is ((~~working or~~)) participating in WCCC approved activities outside the consumer's home;

(6) Pay the provider for child care services when ((~~he or she~~)) the consumer requests additional child care for personal reasons other than ((~~working or~~)) participating in WCCC approved activities that have been authorized by DSHS;

(7) Pay the provider for optional child care programs that ((~~he or she~~)) the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(8) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

(9) Ensure that care is provided in the correct home per WAC 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(10) Cooperate (provide the information requested) with the child care subsidy audit process ((~~to remain eligible for WCCC.~~)):

(a) A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation ((~~and~~));

(b) The consumer remains ineligible until he or she meets child care subsidy audit requirements((~~. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits.~~));

(c) The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter and cooperates;

(d) Care can begin on or after the date the consumer cooperated and meets WCCC requirements in Part II of this chapter.

(11) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect ((~~his or her~~)) the consumer's benefits;

(12) Document their child's attendance in ((~~subsidized~~)) child care by having the consumer or other person authorized by the consumer to take the child to or from the child care:

(a) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the provider;

(13) Provide ((~~to his or her~~)) the in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and

(14) Ensure that their children who receive ((~~subsidized~~)) child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify DSHS, within five days, of any change in providers;

(2) Notify the consumer's provider within ten days when DSHS changes ((~~his or her~~)) the consumer's child care authorization;

(3) Notify DSHS within ten days of any significant change related to the consumer's copayment or eligibility, including:

(a) The number of child care hours the consumer needs (more or less hours);

(b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005. A consumer may notify DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The consumer's household size such as any family member moving in or out of ((~~his or her~~)) the home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;

(4) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0032 Failure to report changes. A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

(1) A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or

(2) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider ((~~is allowed to bill~~)) has correctly billed, including ((~~billing for~~)) absent days (see publications "*Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*((~~, revised 2012~~))" and "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*").

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Comply with:

(a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC, for child care providers who are licensed or certified; or

(b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;

(2) Report pending charges or convictions to DSHS as provided in:

(a) Chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC, for child care providers who are licensed or certified; or

(b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;

(3) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years ((~~old~~)) must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Keep receipts for billed field trip/quality enhancement fees as follows:

(a) Receipts from the previous twelve months must be available immediately for review upon request by DEL;

(b) Receipts from one to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department;

(5) Allow consumers access to their child at all times while the child is in care;

((~~(5)~~)) (6) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

((~~(6)~~)) (7) Follow billing procedures:

(a) As described in the most current version of "*Child Care Subsidies: A ((~~Booklet~~)) Guide for Licensed and Certified Family Home Child Care Providers*," ((~~revised 2012, for licensed and certified providers, including billing only for actual hours of child care both authorized and provided or allowed under WCCC billing guidelines~~)); or

(b) As described in ((~~"*In-Home/Relative Child Care Providers: Information to Help You*," revised 2012, for in-home/relative providers, including billing only for actual hours of child care both authorized and provided;~~

~~(7)~~)) the most current version of "*Child Care Subsidies: A Guide for Family, Friends and Neighbors Child Care Providers*"; or

(c) As described in the most current version of "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*."

(8) Not claim a payment in any month ((~~in which~~)):

(a) A child has ((~~not~~)) attended at least one day in that month; and

((~~(8)~~)) (b) The day attended is within the authorization period.

(9) Invoice the state no later than one calendar year after the actual date of service;

((~~(9)~~)) (10) For both licensed and certified providers and in-home/relative providers, not charge subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and

((~~(10)~~)) (11) For licensed and certified providers, not charge subsidized families for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) ((~~Absence days in excess of five days per month, regardless of whether the child attended or not;~~)) Absent days on days in which the child is scheduled to attend and authorized for care;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0040 Approved activities for applicants and consumers participating in WorkFirst. Applicants and consumers who participate in WorkFirst activities may be eligible for WCCC benefits for the following approved activities in their individual responsibility plans (IRPs), for up to a maximum of sixteen hours per day, including:

(1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;

(2) Employment as defined in WAC 170-290-0003;

(3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;

(4) Transportation time between the location of child care and the consumer's place of employment or approved activity;

(5) Up to ten hours per week of study time for approved classes; and

(6) Up to eight hours of sleep time before or after a night shift.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0045 Approved activities for applicants and consumers not participating in WorkFirst. ((~~This section applies to applicants and consumers of WCCC who do not participate in WorkFirst activities:~~)) (1) **General requirements for employment, self-employment, or ((~~Basic Food employment and training (BF E&T) program.~~** ~~He or she~~)) **Supplemental Nutrition Assistance Program employment and training (SNAP E&T) programs.** An applicant or consumer may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift, when he or she is:

(a) Employed under WAC 170-290-0003;

(b) Self-employed under WAC 170-290-0003; or

(c) Participating in the ((~~BF~~)) SNAP E&T program under chapter 388-444 WAC.

(2) **Special requirements for education.**

(a) An applicant or consumer who is under twenty-two years of age may be eligible for WCCC benefits for high school (HS) or general educational development (GED) program without a minimum number of employment hours.

(b) An applicant or consumer who is twenty-two years of age or older:

(i) May be eligible to receive ((~~the benefits under this subsection only once during his or her lifetime. In order to qualify for the~~)) general education and training benefits under this subsection((~~, he or she~~)). The consumer must work either:

(A) An average of twenty or more hours per week of unsubsidized employment; or

(B) An average of sixteen or more hours per week in a paid federal or state work study program;

(ii) Is limited to up to twenty-four ((~~consecutive~~)) months of WCCC benefits during his or her lifetime for participation in:

(A) Adult basic education (ABE);

(B) English as a second language (ESL); or

(C) High school/general educational development (GED) completion; and

(iii) Is limited to up to thirty-six ((~~consecutive~~)) months of WCCC benefits during his or her lifetime for participation in vocational education ((~~(Voc Ed)~~)). The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities only:

(A) Public and private technical college or school;

(B) Community college; ((~~or~~))

(C) Tribal college; or

(iv) Is limited to up to ten hours per week of WCCC benefits for study time for approved classes. Approved classes include classroom, labs, online class and unpaid internships required by the vocational educational program.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0050 Additional requirements for self-employed WCCC consumers. (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from his or her trade or business, not from wages paid by an employer;

(b) Be responsible to pay his or her self-employment Social Security and federal withholding taxes;

(c) ((~~Not~~)) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income; and

(e) Work outside of the home during the hours ((~~he or she~~)) the consumer requests WCCC benefits. If a consumer's self-employment activities are split between the home and outside of the home, only self-employment and other approved activities outside of the home will be eligible for child care benefits.

(2) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) The consumer must have an approved self-employment plan in the consumer's IRP under WAC 388-310-1700;

(b) The amount of WCCC benefits a consumer receives for self-employment is equal to the number of hours in his or her approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(3) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for his or her self-employment, he or she may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period for self-employment activities outside of the consumer's home.

(a) A consumer((~~s~~)) who ((~~do~~)) does not receive TANF cash assistance and request WCCC benefits for self-employment must provide DSHS with his or her:

(i) Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity including time needed for transportation((~~,~~)) and the location of work activity;

(iv) Profit and loss statement ((~~(or~~)), projected profit and loss statement((~~,~~)) if starting a new business((~~)~~)); and

(v) Either((~~:~~
~~(A)~~)) federal self-employment tax reporting forms for the most current reporting year((~~;~~)) or

((~~(B)~~)) DSHS self-employment income and expense declaration form.

(b) During the first six consecutive months of starting a new self-employment business, the hours of care the consumer is eligible to receive is based on his or her report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive this provision only once during his or her lifetime((~~. The consumer~~)) and must use the benefit provided by this provision within the consumer's authorization period.

(c) DSHS determines a consumer's need for care after ((~~she or he has received~~)) receiving WCCC ((~~benefits for~~)) self-employment benefits for six consecutive months as provided in (b) of this subsection ((~~is determined by DSHS in the following manner~~)) by:

(i) Dividing the consumer's gross monthly self-employment income by the federal or state minimum wage ((~~(~~)), whichever is lower((~~)~~)), to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional child care needs for other approved employment, education, training, or travel to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed, at the same or a different business, each parent must report his or her own self-employment earnings and self-employment plan. If the requested verification is not provided, then WAC 170-290-0012((~~(5)~~)) applies to determining eligibility.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0055 Receipt of benefits when not engaged in approved activities. ((~~When care is approved in the situations described in subsections (1) and (2) of this section, the child needs to attend for the provider to bill.~~)) (1) **Fourteen-day wait period.** DSHS may authorize WCCC payments for a child's attendance in child care for up to fourteen consecutive days when a consumer is waiting to enter an approved activity under WAC 170-290-0040 or 170-290-0045.

(2) **Twenty-eight-day gap period.** DSHS may authorize WCCC payments to ensure a child's continuing attendance in child care for up to twenty-eight consecutive days when a consumer experiences a gap in ((~~his or her~~)) employment or approved activity. The consumer may be eligible for this twenty-eight-day gap period:

(a) Twice in a calendar year; and

(b) For the same number of units open while the consumer is in the approved activity((~~,~~)) not to exceed ((~~two hundred thirty hours a month~~)) full-time care.

(3) The twenty-eight-day gap period must be used within the consumer's ((~~authorization~~)) current eligibility period and is not an approved activity for the purpose of determining eligibility.

(4) In order for a consumer to qualify for the twenty-eight-day gap period:

(a) The consumer must be currently receiving WCCC benefits;

(b) The consumer must report to DSHS within ten days the loss of ((~~his or her~~)) employment or approved activity; and

(c) The consumer must:

(i) Be looking for another job; or

(ii) Have verbal or written assurance from the consumer's employer or approved activity that the employment or approved activity will resume within the twenty-eight-day gap period.

(5) A consumer is eligible for the minimum copayment during the fourteen-day wait period or twenty-eight-day gap period.

(6) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0060 Countable income. DSHS counts income as money an applicant or consumer earns or receives themselves, or on behalf of the child from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order; ((~~or~~))

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(c) For applicants or consumers who have an informal verbal or written child support agreement, the amount verified by a written agreement signed by the noncustodial parent (NCP);

(d) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(3) Supplemental security income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation, except as required under RCW 43.215.1351;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed((~~;~~)):

(a) Verify if AmeriCorps has child care services available.

(b) If the consumer is using the AmeriCorps child care services, they are not eligible for WCCC.

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0065 Calculation of income. DSHS uses a consumer's countable income when determining ((his or her)) income eligibility and copayment. A consumer's countable income is the sum of all income listed in WAC 170-290-0060 minus any child support paid out ((())through a court order, division of child support administrative order, or tribal government order(()))).

(1) To determine a consumer's income, DSHS either:

(a) ((Determines)) Calculates an average monthly income by:

(i) Determining the number of months, weeks or pay periods it took the consumer's WCCC household to earn the income; and ((divide))

(ii) Dividing the income by the same number of months, weeks or pay periods ((to determine an average monthly amount)); or

(b) When the consumer begins new employment uses the best available estimate of the consumer's WCCC household's current income ((when he or she begins new employment, or if the consumer does not have an income history to make an accurate estimate of his or her future income, DSHS may ask the consumer's employer to verify his or her income)):

(i) As verified by the consumer's employer; or

(ii) As provided by the consumer through a verbal or written statement within the first sixty days of new or changed employment.

(2) If a consumer receives a lump sum payment (such as money from the sale of property or back child support payment) in the month of application or during his or her WCCC eligibility:

(a) DSHS ((divides)) calculates a monthly amount by dividing the lump sum payment by twelve ((to come up with a monthly amount));

(b) DSHS adds the monthly amount to the consumer's expected average monthly income:

(i) For the month it was received; and

(ii) For the remaining months of the current ((authorization)) eligibility period; and

(c) To remain eligible for WCCC the consumer must meet WCCC income guidelines ((for WCCC)) after the lump sum payment is applied ((to remain eligible for WCCC)).

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0070 Excluded income and deductions. (1) ((The WCCC program)) DSHS does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

(d) Reimbursements, such as an income tax refund;

(e) Diversion cash assistance;

(f) Military housing and food allowance;

(g) The TANF grant for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(h) Payments to the consumer from his or her employer for benefits such as medical plans;

(i) Earned income of a WCCC family member defined under WAC 170-290-0015(2);

(j) Income of consumers described in WAC 170-290-0005 (1)(c)(iii) through (((ix))) (x);

(k) Earned income from a minor child who DSHS counts as part of the consumer's WCCC household; and

(l) Benefits received by children of Vietnam War veterans who are diagnosed with any forms ((of)) or manifestations of spina bifida except spina bifida occulta.

(2) ((WCCC)) DSHS deducts the amount a consumer pays for child support under court order, division of child support administrative order, or tribal government order, from the consumer's other countable income when ((figuring his or her)) determining eligibility and copayment for the WCCC voucher or contract programs.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0075 Determining income eligibility and copayment amounts. (1) DSHS takes the following steps to determine a consumer's eligibility and copayment, whether care is provided under a WCCC voucher or contract:

(a) ((Determine the consumer's)) Family size (under WAC 170-290-0015); and

(b) ((Determine the consumer's)) Countable income (under WAC 170-290-0065).

(2) ((Before February 1, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:

~~IF A CONSUMER'S INCOME IS:~~	~~THEN THE CONSUMER'S COPAYMENT IS:~~
~~(a) At or below 82% of the federal poverty guidelines (FPG).~~	~~$15~~
~~(b) Above 82% of the FPG up to 137.5% of the FPG.~~	~~$50~~
~~(c) Above 137.5% of the FPG through 175% of the FPG.~~	~~The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $50~~
~~(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.~~	

~~(3) Effective February 1, 2011, through February 28, 2011, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:~~

~~IF A CONSUMER'S INCOME IS:~~	~~THEN THE CONSUMER'S COPAYMENT IS:~~
~~(a) At or below 82% of the federal poverty guidelines (FPG).~~	~~$15~~
~~(b) Above 82% of the FPG up to 137.5% of the FPG.~~	~~$60~~
~~(c) Above 137.5% of the FPG through 175% of the FPG.~~	~~The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 44%, then adding $60~~
~~(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.~~	

~~(4) Effective March 1, 2011, through June 30, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is:~~

~~IF A CONSUMER'S INCOME IS:~~	~~THEN THE CONSUMER'S COPAYMENT IS:~~
~~(a) At or below 82% of the federal poverty guidelines (FPG).~~	~~$15~~
~~(b) Above 82% of the FPG up to 137.5% of the FPG.~~	~~$65~~
~~(c) Above 137.5% of the FPG through 175% of the FPG.~~	~~The dollar amount equal to subtracting 137.5% of FPG from countable income, multiplying by 50%, then adding $65~~
~~(d) Above 175% of the FPG, a consumer is not eligible for WCCC benefits.~~	

~~(5) On or after July 1, 2012, if the consumer's family countable monthly income falls within the range below, then his or her copayment is~~)) DSHS calculates the consumer's copayment as follows:

IF A CONSUMER'S INCOME IS:	THEN THE CONSUMER'S COPAYMENT IS:
(a) At or below 82% of the federal poverty guidelines (FPG).	$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding $65.
((~~(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.~~))	

((~~(6)~~)) (3) DSHS does not prorate the copayment when a consumer uses care for part of a month.

((~~(7)~~)) (4) The FPG is updated every year ((~~on April 1~~)). The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

AMENDATORY SECTION (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

WAC 170-290-0082 Eligibility period. (1) A consumer who meets all of the requirements of part II of this chapter is eligible to receive WCCC subsidies for twelve months ((~~before having to redetermine his or her income eligibility~~)). The twelve-month eligibility period in this subsection applies only if enrollments in the WCCC program are capped as provided in WAC 170-290-0001(1). Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-0031.

(2) A consumer's eligibility may be for less than twelve months if:

(a) Requested by the consumer; or

((~~(b) A TANF consumer's individual responsibility plan indicates child care is needed for less than twelve months.~~

~~(3) A consumer's eligibility may end sooner than twelve months if:~~

~~(a) The consumer no longer wishes to participate in WCCC; or~~))

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-0110.

((~~(4)~~)) (3) All children in the consumer's household under WAC 170-290-0015 are eligible for the twelve-month eligibility period.

((~~(5)~~)) (4) The twelve-month eligibility period begins:

(a) When benefits begin under WAC 170-290-0095; or

(b) Upon reapplication under WAC 170-290-0109(4).

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0085 Change in copayment. (1) A consumer's copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;

(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;

(f) DEL makes a mass change in benefits due to a change in law or program funding;

(g) The consumer is approved for a new eligibility period; or

(h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) Copayment changes are effective on the first day of the month immediately following the date the copayment change was made.

(3) DSHS does not increase a consumer's copayment during ((~~his or her~~)) the current eligibility period when ((~~his or her~~)) countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005, and:

(a) The consumer's monthly countable income increases; or

(b) The consumer's family size decreases.

(4) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0090 Minimum copayment. (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment ((~~when he or she first applies~~)) at first application for WCCC((~~, and~~)) when benefits are paid. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment ((~~when the consumer reapplies~~)) at reapplication for WCCC after a break of at least thirty days in his or her approved ((~~activity~~)) activities. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC ((~~child care~~)) services, and the first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

(5) Two-parent families automatically qualify for the minimum copayment during a twenty-eight-day gap period in WAC 170-290-0055 only if both parents meet the gap requirements. Otherwise, eligibility workers must determine the change in copayment based on the family's countable income and family size, as specified in WAC 170-290-0065 and 170-290-0085.

(6) DSHS does not prorate the copayment.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0095 When WCCC benefits start. (1) WCCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application ((~~or reapplication~~)) for WCCC benefits;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055;

(c) The consumer needs child care for ((~~work or~~)) approved activities within at least thirty days of the date of application for WCCC benefits((~~; and~~

~~(d) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children~~)).

(2) If a consumer fails to turn in all information within thirty days from ((~~his or her~~)) the application date, the consumer must restart the application process.

(3) The consumer's application date is whichever of the following is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

NEW SECTION

WAC 170-290-0106 When provider payments start. The provider is eligible to receive payment when both of the following are met:

(1) The consumer has chosen the eligible provider (under WAC 170-290-0125) and the provider is caring for the children during an eligibility period; and

(2) DSHS notifies the provider that the consumer is eligible.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0107 Denial of benefits—Date of redetermining eligibility. DSHS sends a consumer a denial letter when the consumer has applied for child care and the consumer:

(1) Withdraws ((~~his or her~~)) the request;

(2) Is not eligible due to the consumer's:

(a) Family composition;

(b) Income; or

(c) Activity.

(3) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-0012 within thirty days;

(4) If a consumer turns in information or otherwise meets eligibility requirements after DSHS sends the consumer a denial letter, DSHS determines the consumer's benefit begin date as provided in WAC 170-290-0095((~~(3)~~)).

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0109 ((~~New eligibility period.~~)) Reapplication. (1) If a consumer wants to receive uninterrupted child care benefits for another eligibility period, ((~~he or she~~)) the consumer must reapply for WCCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and

(c) The consumer meets all WCCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on ((~~his or her~~)) reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a consumer submits a reapplication after the last day of ((~~his or her~~)) the current eligibility period, the consumer's benefits begin:

(a) On the date that the consumer's reapplication is date-stamped as received in DSHS's community service office or entered into the DSHS automated system, whichever date is earlier;

(b) When the consumer is working or participating in an approved ((~~WorkFirst~~)) activity; and

(c) The consumer's child is being cared for by ((~~his or her~~)) an eligible WCCC provider.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0110 Termination of and redetermining eligibility for benefits. (1) DSHS stops a consumer's eligibility for WCCC benefits when:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate, including special needs payment, but not including registration, field trip and non-standard hours bonus payments, for all of the consumer's children in care under WAC 170-290-0005; or

(b) The consumer does not:

(i) Comply with the copayment requirements of WAC 170-290-0030 (3) and (4);

(ii) Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);

(iii) Meet other WCCC eligibility requirements related to family size, income and approved activities; or

(iv) Cooperate with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

(2) A consumer may be eligible for WCCC again beginning on the date that the consumer:

(a) Meets all WCCC eligibility requirements;

(b) Complies with the copayment requirements of WAC ((~~170-290-0003~~)) 170-290-0030 (3) and (4); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0115 Notice of payment changes. DSHS provides WCCC consumers with at least ten days written notice for changes to WCCC eligibility or provider payments ((~~related to suspension, reduction, or termination of benefits~~)), or when DSHS forces a change in child care arrangements((~~, except as noted in WAC 170-290-0120~~)).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0125 Eligible child care providers. To receive payment under the WCCC program, a consumer's child care provider must be:

(1) An in-home/relative provider. Providers other than those specified in subsection (2) of this section must meet the requirements in WAC 170-290-0130; or

(2) **A licensed, certified, or DEL-contracted provider.**

(a) Licensed providers ((~~are~~)) must:

(i) Be currently licensed as required by chapter 43.215 RCW and as described by chapters 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC; or

(ii) ((~~Meeting~~)) Meet the provider's state's licensing regulations, for providers who care for children in states bordering Washington. DSHS pays the lesser of the following to qualified child care facilities in bordering states:

(A) The provider's private pay rate for that child; or

(B) The DSHS maximum child care subsidy daily rate for the DSHS region where the child resides.

(b) Certified providers are exempt from licensing but certified by DEL, such as:

(i) Tribal child care facilities that meet the requirements of tribal law;

(ii) Child care facilities on a military installation; and

(iii) Child care facilities operated on public school property by a school district.

(c) DEL-contracted seasonal day camp ((~~have~~)) has a contract with DEL to provide subsidized child care((~~; or~~

~~(2) **An in-home/relative provider.** Providers other than those specified in subsection (1) of this section must meet the requirements in WAC 170-290-0130~~)).

AMENDATORY SECTION (Amending WSR 15-24-039, filed 11/20/15, effective 12/21/15)

WAC 170-290-0130 In-home/relative providers—Eligibility. (1) To be eligible as an in-home/relative provider to care for children under WCCC, the applicant must be:

(a) Eighteen years of age or older;

(b) A citizen or legal resident of the U.S.; and

(c) Meet all of the requirements listed in WAC 170-290-0135.

(2) Additionally, eligible in-home/relative providers must:

(a) Meet all applicable background check requirements in part II of this chapter;

(b) Agree to provide care, supervision, and daily activities based on the child's developmental needs, including environmental, physical, nutritional, emotional, cognitive, safety, and social needs; and

(c) Bill only for actual hours of care provided. Those hours must be authorized by DSHS((~~,~~)) and used by the parent for ((~~his or her DSHS~~)) approved activities ((~~or work hours~~)).

(3) The following eligible in-home/relative providers, except those providers residing with a disqualified person, may provide care in either their home or the child's home:

(a) Adult siblings that live outside the child's home;

(b) Extended tribal family members;

(c) Grandparents or great-grandparents; or

(d) Aunts or uncles, or great-aunts or great-uncles.

(4) All other eligible providers, including other family members, friends, neighbors, or nannies must provide care in the child's home only.

(5) The following persons are not eligible to provide in-home/relative care under part II of this chapter:

(a) The child's biological, adoptive, or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner;

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner; or

(d) An individual who has a revoked child care license.

(6) WCCC consumers may have up to two in-home/relative providers authorized for payment during the consumer's eligibility period((~~,~~)) plus one back-up provider, either licensed or in-home/relative, also authorized to care for the consumer's children.

(7) WCCC consumers who choose in-home/relative care are responsible to monitor the environment and child care services they receive from their provider. WCCC consumers must ensure that their children who receive subsidized child care outside of their own home are current on all Washington state immunizations, ((~~except in cases based on religious preference or medical conditions~~)) unless exempt under department of health regulations.

(8) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.

(9) In-home/relative provider payments cannot begin prior to the receipt of all required background checks indicating no disqualifying information.

AMENDATORY SECTION (Amending WSR 15-24-039, filed 11/20/15, effective 12/21/15)

WAC 170-290-0135 In-home/relative providers—Information provided to DSHS. (1) When a consumer chooses in-home/relative child care, the consumer and the provider must give DSHS the following information:

(a) The in-home/relative provider's legal name, address((~~,~~)) and telephone number;

(b) A copy of the provider's valid Social Security card;

(c) A copy of the provider's photo identification;

(d) A completed, signed and dated background check form; and

(e) A completed ((~~WCCC~~)) provider application form, signed and dated by the consumer and the provider, in which they both attest that the provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical and mental health to be a safe child care provider and meet the needs of the children in care;

(iii) Able to work with the children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness;

(vi) Prompt and regular in job attendance;

(vii) Informed about basic health practices, prevention and control of infectious disease, and immunizations; and

(viii) Not an individual who has a revoked child care license.

(2) If DSHS requests it, the consumer and/or the provider must provide written medical or legal evidence that the in-home/relative provider is of sufficient physical and mental health to provide safe, reliable and developmentally appropriate child care services.

(3) ((~~When a consumer chooses in-home/relative child care,~~)) The provider must give DSHS information as to whether an individual sixteen years of age or older living with the provider is a registered sex offender.

AMENDATORY SECTION (Amending WSR 15-24-039, filed 11/20/15, effective 12/21/15)

WAC 170-290-0138 In-home/relative providers—Responsibilities. An in-home/relative provider must:

(1) Provide care, supervision, and daily activities based on the child's developmental needs;

(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;

(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;

(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;

(5) Report a revoked child care license;

(6) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for ((~~his or her DSHS~~)) approved activities;

(7) Bill for no more than six children at one time during the same hours of care;

(8) Track attendance documenting the days and hours of care provided and keep records for five years:

(a) If paper attendance records are used, the provider must have the consumer sign and date the attendance records at least weekly, verifying the accuracy of the dates and times.

(b) Providers may use an electronic attendance system as provided in WAC 170-290-0139 to record attendance in lieu of a paper sign-in record((~~.~~

~~(c) Providers must keep attendance records for five years documenting the days and hours of care provided~~));

(9) Repay any overpayments under WAC 170-290-0268; and

(10) Have at least one working telephone accessible in the home for incoming and outgoing calls during all times that subsidized child care is provided. The telephone must have 911 emergency services calling access.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0139 In-home/relative providers—Electronic attendance records—Records retention. (1) ((~~In-home/relative providers must record attendance as provided in WAC 170-290-0138(7).~~

~~(2)~~)) If an electronic system is used to record attendance, it must record either an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar action by the parent or designee when signing the child in and out of the in-home/relative provider's care.

((~~(3)~~)) (2) The electronic system selected must ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against repudiation of the electronic records, and must be able to:

(a) Produce an authentic, verifiable written record for each transaction upon demand that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(b) ((~~Authenticate (~~)) Prove the identity of((~~)~~)) the sender of the record and ensure that the electronic record has not been altered;

(c) Uniquely identify each record;

(d) Capture an electronic record for each transaction conducted;

(e) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed((~~,~~)) and managed as a unit;

(f) Retain electronic records in an accessible form for their legal minimum retention period;

(g) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(h) Produce authentic copies of electronic records and supply them in useable formats, including hard copies, for business purposes and all public access purposes;

(i) Develop an approach to maintain the authenticity and integrity of electronically signed electronic records;

(j) Ensure that the electronic system performs in an accurate, reliable, and consistent manner in the normal course of business; and

(k) Limit system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

((~~(4)~~)) (3) Electronic attendance records must contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(a) The contents of the electronic record;

(b) The method used to sign the electronic record, if applicable;

(c) The person signing the electronic record; and

(d) The date when the signature was executed.

((~~(5)~~)) (4) As used in this section:

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Sign" includes signing by physical signature, if available, or electronic signature.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0140 In-home/relative providers—Ineligibility. DSHS does not pay for the cost of child care provided by an in-home/relative provider if:

(1) The provider does not meet the requirements listed in WAC 170-290-0130, 170-290-0135, and 170-290-0138;

(2) The provider has been convicted of, or has charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(3) DSHS has not received all background check results under WAC 170-290-0143((~~(1)~~)) and 170-290-0150; or

(4) DSHS determines a consumer's provider is not of suitable character and competence or of sufficient physical or mental health to meet the needs of the child in care, or the consumer's child may be at risk of harm by this provider, as indicated by information other than conviction information. ((~~DSHS will use criteria, such as the following,~~)) When reviewing information about incidents, issues, reports, and findings DSHS will consider:

(a) Recency;

(b) Seriousness;

(c) Type;

(d) Frequency; and

(e) Relationship of the information obtained to the direct care of a child((~~;~~)) including, but not limited to, impacts to the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs.

AMENDATORY SECTION (Amending WSR 14-03-021, filed 1/7/14, effective 2/7/14)

WAC 170-290-0143 In-home/relative providers—Background checks—Required persons. (1) ((~~Background checks for eligible licensed and certified providers are covered under chapter 170-06 WAC.~~

~~(2)~~)) A background check must be completed for:

(a) All in-home/relative providers who apply to care for a WCCC consumer's child; and

(b) Any individual sixteen years of age or older who is residing with a provider when the provider cares for the child in the provider's own home where the child does not reside.

((~~(3)~~)) (2) A background check must be completed for individuals listed in subsection ((~~(2)~~)) (1)(a) and (b) of this section at least every two years.

((~~(4)~~)) (3) Additional background checks must be completed for individuals listed in subsection ((~~(2)~~)) (1)(a) and (b) of this section when:

(a) Any individual sixteen years of age or older is newly residing with a provider when the provider cares for the child in the provider's own home where the child does not reside;

(b) DSHS has a valid reason to check more frequently;

(c) An in-home/relative provider applies to provide care for a family, such as when:

(i) A thirty day break in service occurs to the current consumer;

(ii) There is a thirty day break in consumer eligibility; or

(iii) A provider is currently providing care and there are no prior background results for this provider.

((~~(5)~~)) (4) DSHS does not need to request a new background check for an individual in subsection ((~~(2)~~)) (1)(a) or (b) if:

(a) DSHS has results that were received no more than ninety days prior to the current requested start date of care; and

(b) The results indicate there is no record.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0150 In-home/relative providers—Background checks—Included information and sources. (1) DSHS obtains background information, at a minimum, from the Washington state patrol under chapter 10.97 RCW and RCW 43.43.830 through 43.43.837 via the background check central unit (BCCU).

(2) The background information includes, at a minimum, criminal convictions and pending charges. Additional sources may include:

(a) Child/adult protective service case information;

(b) Civil judgments, determinations, or disciplinary board final decisions of abuse or neglect;

(c) Other states and federally recognized Indian tribes;

(d) The department of corrections and the courts;

(e) If the individual being checked((~~, if he or she~~)) self-discloses information; and

(f) Law enforcement records of convictions and pending charges in other states or locations if reports from credible community sources indicate a need to investigate another state's records.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0155 In-home/relative providers—Background checks—Subsequent steps. After DSHS receives the background information, DSHS:

(1) Compares the background information with convictions of, or charges pending for crimes on the DEL director's list in WAC 170-06-0120;

(2) Reviews the background information using the following rules:

(a) DSHS gives the same weight to a pending charge for a crime as a conviction;

(b) If the conviction has been renamed, DSHS gives the same weight as the previous named conviction. For example, larceny is now called theft;

(c) DSHS gives convictions whose titles are preceded with the word "attempted" the same weight as those titles without the word "attempted"; and

(d) DSHS does not consider the crime a conviction for the purposes of WCCC when:

(i) It has been pardoned; or

(ii) A court of law acts to expunge, dismiss, or vacate the conviction record.

(3) Notifies the consumer whether or not the provider has been disqualified for WCCC;

(4) Allows the consumer to decide character and suitability of the provider when an individual is not automatically disqualified due to the background information from the record of arrests and prosecutions (RAP) sheet or other information available to DSHS, except as provided under WAC 170-290-0165(1); and

(5) Denies or stops payment when the background information disqualifies the individual being checked.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0167 In-home/relative providers—Background checks—Disqualified person living with the provider. (1) If a consumer's in-home/relative provider is disqualified based only on the disqualifying background of a person living with the provider, then:

(a) Child care is allowed only in the child's home away from the disqualified individual, regardless of whether or not the provider meets the other qualifications listed in WAC 170-290-0130; and

(b) The consumer and provider sign an agreement with DSHS stating that:

(i) Care will occur only in the child's home; and

(ii) There is no contact between the child and disqualified person during child care hours.

(2) The consumer may also choose to select a licensed child care center or family child care home provider, or submit an application for a different in-home/relative provider.

(3) If DSHS becomes aware that the consumer and provider are not meeting the conditions in subsection (1)(a) and (b) of this section:

(a) DSHS may terminate payments ((~~without~~)) with notice as provided under WAC 170-290-0115; and

(b) The consumer may be subject to an overpayment under WAC 170-290-0271.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0180 WCCC subsidy rates((~~—Effective date~~)). State child care subsidy rates (((~~full-day, half-day and hourly~~))) in part II of this chapter ((~~are effective on July 1, 2009, and~~)) are subject to legislative change.

AMENDATORY SECTION (Amending WSR 13-22-040, filed 10/31/13, effective 12/1/13)

WAC 170-290-0190 WCCC authorized and additional payments—Determining units of care. (1) DSHS may authorize and pay for the following ((~~child care hours~~)):

(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten hours per day;

(b) ((~~Full-day~~)) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;

(c) Hourly child care for in-home/relative child care;

(d) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule ((~~and the child's activity schedule;~~

~~(c) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day and the consumer does not participate in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;~~

~~(d) Hourly child care for in-home/relative child care as follows:~~

~~(i) Two hundred thirty hours for in-home/relative child care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule;~~

~~(ii) Hourly child care when the consumer does not participate in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule and the child's activity schedule~~));

(e) A registration fee (under WAC 170-290-0245);

(f) A field trip fee (under WAC 170-290-0247);

(g) Special needs care when the child has a documented need for a higher level of care (under WAC 170-290-0220, 170-290-0225, 170-290-0230, and 170-290-0235); and

(h) A nonstandard hours bonus under WAC 170-290-0249.

(2) DSHS may authorize up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the ((~~home or work (~~)) approved activity((~~)~~)) site.

"Appropriate" means licensed or certified child care under WAC 170-290-0125, or an approved in-home/relative provider under WAC 170-290-0130.

"Reasonable distance" is determined by comparing what other local families must travel to access appropriate child care.

(3) DSHS authorizes ((~~an additional amount of~~)) overtime care if:

(a) More than ten hours of care is provided per day (up to a maximum of sixteen hours a day); and

(b) The provider's written policy is to charge all families for these hours of care in excess of ten hours per day.

AMENDATORY SECTION (Amending WSR 14-24-070, filed 11/26/14, effective 1/1/15)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$31.47	$26.47	$25.00	$23.55
	Half-Day	$15.74	$13.24	$12.50	$11.78
Spokane County	Full-Day	$32.19	$27.07	$25.58	$24.09
	Half-Day	$16.10	$13.54	$12.79	$12.05
Region 2	Full-Day	$31.79	$26.53	$24.61	$21.76
	Half-Day	$15.90	$13.27	$12.31	$10.88
Region 3	Full-Day	$42.07	$35.08	$30.30	$29.42
	Half-Day	$21.04	$17.54	$15.15	$14.71
Region 4	Full-Day	$48.96	$40.88	$34.30	$30.89
	Half-Day	$24.48	$20.44	$17.15	$15.45
Region 5	Full-Day	$35.90	$30.89	$27.20	$24.14
	Half-Day	$17.95	$15.45	$13.60	$12.07
Region 6	Full-Day	$35.30	$30.30	$26.47	$25.89
	Half-Day	$17.65	$15.15	$13.24	$12.95

(Chart effective 01/01/15)

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 and 170-295-0050 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 14-24-070, filed 11/26/14, effective 1/1/15)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$26.80	$26.80	$23.30	$23.30	$20.73
	Half-Day	$13.40	$13.40	$11.65	$11.65	$10.37
Spokane County	Full-Day	$27.40	$27.40	$23.83	$23.83	$21.18
	Half-Day	$13.70	$13.70	$11.92	$11.92	$10.59
Region 2	Full-Day	$28.30	$28.30	$24.61	$22.01	$22.01
	Half-Day	$14.15	$14.15	$12.31	$11.01	$11.01
Region 3	Full-Day	$37.54	$37.54	$32.36	$28.48	$25.89
	Half-Day	$18.77	$18.77	$16.18	$14.24	$12.95
Region 4	Full-Day	$44.17	$44.17	$38.41	$32.36	$31.06
	Half-Day	$22.09	$22.09	$19.21	$16.18	$15.53
Region 5	Full-Day	$29.78	$29.78	$25.89	$24.61	$22.01
	Half-Day	$14.89	$14.89	$12.95	$12.31	$11.01
Region 6	Full-Day	$29.78	$29.78	$25.89	$25.89	$24.61
	Half-Day	$14.89	$14.89	$12.95	$12.95	$12.31

(Chart effective 01/01/15)

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must ((~~have a child-specific and time-limited exception~~)) follow WAC 170-296A-0050 and 170-296A-5625 and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 14-03-060, filed 1/13/14, effective 2/13/14)

WAC 170-290-0220 Special needs rates—Qualification and required documentation. (1) **Qualification.** To qualify for a special needs rate in addition to the base rate, the consumer must request a special needs ((~~rate~~)) review for ((~~his or her~~)) the child. The child must either:

(a) Be thirteen up to nineteen years ((~~old~~)) of age and be under court supervision; or

(b) Be less than nineteen years ((~~old~~)) of age and have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care needed in the child care setting.

(2) **Required documentation.** The documentation must:

(a) Support the severity of the condition and level of care required to meet that child's need;

(b) Describe the child's additional needs ((~~in addition to~~)) above the daily routine care required under chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care;

(c) Address relevant areas, such as ambulatory assistance, feeding, hygiene assistance, communication, or behavior as applicable and as needed by the child;

(d) Include the DEL special needs request form, one completed separately by the consumer and the provider; and

(e) Have the child's condition and need for higher level of care verified by an individual who is not employed by the child care facility nor a relative of the provider or the child's family, and is either a:

(i) Health, mental health, education or social service professional with at least a master's degree; or

(ii) Registered nurse;

(f) Include one or more of the following completed forms from a person listed in (e) of this subsection:

(i) Medical or psychological reports from a mental health professional;

(ii) Medical reports or statements from a medical health profession;

(iii) Individualized education plan (IEP);

((~~(ii)~~)) (iv) Individual health plan (IHP);

((~~(iii)~~)) (v) Individual family service plan (IFSP);

((~~(iv)~~)) (vi) Basic health records from ((~~his or her~~)) the health care provider;

((~~(v)~~)) (vii) Comprehensive assessments from a mental health professional((~~; or~~

~~(vi) Medical or psychological reports from a mental health professional~~)).

(g) For one-on-one care, the name of the person providing the care.

(3) **Special needs review.**

(a) DSHS processes all Level 1 special needs cases.

(b) DEL and DSHS jointly ((~~process~~)) review Level 2 special needs cases.

(c) DEL and DSHS jointly review special needs requests for children age thirteen through age nineteen.

(d) All requests for Levels 1 and 2 special needs additional rates are decided within fifteen consecutive days of the initial request. The fifteen-day time limit begins on the day after the date that the consumer and provider provide all of the required verification for that case as provided in this section.

((~~(d)~~)) (e) The provider will be notified of the approval or denial of a Level 2 special needs additional rate request within fourteen calendar days of the decision.

(4) **Purpose of special needs rate.** WCCC does not pay for the provider's training needs to care for a specific child or for the child's equipment needs while in the child care setting. The special needs rate is for care provided in addition to the daily routine care required under chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care.

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

WAC 170-290-0225 Special needs rates—Licensed or certified child care ((~~centers~~)) facilities and seasonal day camps. (1) In addition to the base rate for licensed or certified child care ((~~centers~~)) facilities and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$7.30	$6.14	$5.80	$5.45
	Half-Day	$3.65	$3.07	$2.90	$2.73
Region 2	Full-Day	$7.36	$6.15	$5.70	$5.05
	Half-Day	$3.68	$3.08	$2.85	$2.52
Region 3	Full-Day	$9.75	$8.13	$7.02	$6.82
	Half-Day	$4.88	$4.06	$3.51	$3.41
Region 4	Full-Day	$11.35	$9.48	$7.95	$7.16
	Half-Day	$5.67	$4.74	$3.98	$3.58
Region 5	Full-Day	$8.32	$7.16	$6.30	$5.59
	Half-Day	$4.16	$3.58	$3.15	$2.80
Region 6	Full-Day	$8.18	$7.02	$6.14	$6.00
	Half-Day	$4.09	$3.51	$3.07	$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least eighteen years of age; ((~~and~~))

(b) Meet the requirements for being an assistant under chapter 170-295 WAC ((~~and~~));

(c) Maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

(a) Is age thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 14-12-050, filed 5/30/14, effective 6/30/14)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$6.00	$5.40	$5.40	$4.80
	Half-Day	$3.00	$2.70	$2.70	$2.40
Region 2	Full-Day	$6.00	$5.70	$5.10	$5.10
	Half-Day	$3.00	$2.85	$2.55	$2.55
Region 3	Full-Day	$8.70	$7.50	$6.60	$6.00
	Half-Day	$4.35	$3.75	$3.30	$3.00
Region 4	Full-Day	$9.00	$8.90	$7.50	$7.20
	Half-Day	$4.50	$4.45	$3.75	$3.60
Region 5	Full-Day	$6.60	$6.00	$5.70	$5.10
	Half-Day	$3.30	$3.00	$2.85	$2.55
Region 6	Full-Day	$6.60	$6.00	$6.00	$5.70
	Half-Day	$3.30	$3.00	$3.00	$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed $15.89 per hour.

(2) If the provider has an exception to care for a child who:

(a) Is age thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

(a) Be at least eighteen years ((old; and)) of age;

(b) Meet the requirements for being an assistant under chapter 170-296A WAC; and

(c) Maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

AMENDATORY SECTION (Amending WSR 14-03-060, filed 1/13/14, effective 2/13/14)

WAC 170-290-0235 Special needs rates—In-home/relative providers. (1) In addition to the highest base rate as provided in WAC 170-290-0240(1), the state may authorize the following additional special needs rate ((which is reasonable and verifiable as provided in WAC 170-290-0220)):

(a) **Level 1.** Sixty-two cents per hour((, for a total of two dollars and eighty-two cents per hour)); or

(b) **Level 2.** A rate greater than Level 1, but not to exceed $9.41 per hour.

(2) If other children in the home are also authorized for in-home/relative care with the same provider, ((DSHS authorizes two dollars and twenty cents per hour for)) under WAC 170-290-0240:

(a) The child who needs the greatest number of hours of care ((and two dollars and seventeen cents per hour)) will be authorized the greater amount.

(b) For the care of each additional child in the family authorize the lower base rate.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0247 Field trip/quality enhancement fees. (1) DSHS pays licensed or certified family home child care providers a monthly field trip/quality enhancement fee up to ((twenty)) thirty dollars per child or the provider's actual cost for the field trip, whichever is less, only if the fee((s are)) is required of all parents whose children are in the provider's care. DEL-licensed or certified child care centers and school-age centers are not eligible to receive field trip/quality enhancement fee((s)).

(2) The field trip/quality enhancement fee is to cover the provider's actual expenses for:

(((1))) (a) Admission;

(((2) Transportation (not to include the provider's gas and insurance); and

(3))) (b) Enrichment programs and/or ongoing lessons;

(c) Public transportation or mileage reimbursement at the state office of financial management rate for the use of a private vehicle;

(d) The cost of hiring a nonemployee to provide an ((in-house field trip)) activity at the child care site in-house field trip activity; or

(e) The purchase or development of a prekindergarten curriculum.

(3) The field trip/quality enhancement fee shall not cover fees or admission costs for adults on field trips, or food purchased on field trips.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0249 Nonstandard hours bonus. (1) A consumer's provider may receive a nonstandard hours bonus (NSHB) payment of ((fifty)) seventy-five dollars per child per month for care provided ((in January 2008 or later)) if:

(a) The provider is licensed or certified;

(b) The provider provides at least ((forty)) thirty hours of nonstandard hours care during one month; and

(c) The total cost of the NSHB to the state does not exceed the amount appropriated for this purpose by the legislature for the current state fiscal year.

(2) Nonstandard hours are defined as:

(a) ((Weekdays)) Before 6 a.m. or after 6 p.m.;

(b) Any hours on Saturdays and Sundays; and

(c) Any hours on legal holidays, as defined in RCW 1.16.050.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0250 Eligible provider capacity and payment. (1) DSHS may pay:

(a) Licensed and certified providers for authorized care up to the provider's licensed capacity as determined under WAC ((170-151-080)) 170-297-5625, 170-295-0080, or 170-296A-5700, as appropriate; and

(b) In-home/relative providers for authorized care up to a maximum of six eligible children as provided in WAC 170-290-0138(((6))).

(2) Licensed providers may not bill the state for more than the number of children they have in their licensed capacity and who are authorized to receive child care subsidies.

(3) A violation of subsection (2) of this section may:

(a) Result in the immediate suspension of the provider's subsidy payments; and

(b) Establish a provider overpayment as provided in WAC 170-290-0268.

(((4) As used in this section, "capacity" has the same meaning as defined in WAC 170-151-010, 170-295-0010, and 170-296A-0010.))

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0266 Payment discrepancies—Generally. (1) Payment discrepancies include both underpayments and overpayments.

(2) For providers or consumers not covered under WAC 170-290-0267 through 170-290-0275, payment discrepancies are subject to chapter 388-410 WAC (((benefit errors))).

(3) For providers covered under the collective bargaining agreement, all other payment discrepancy issues are covered under WAC 170-290-0275.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0267 Payment discrepancies—Provider underpayments. (1) Underpayments to a provider occur if DSHS pays less than the amount the provider is eligible to receive.

(2) Underpayment requests will only be considered by DSHS if the provider submitted ((his or her)) the original invoice for payment to DSHS no later than twelve months after the date of service.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0269 Payment discrepancies—Consumer underpayments. If a copayment amount determined by DSHS for a consumer results in an underpayment, the consumer may request reimbursement within three years of the date of child care service, if ((he or she)) the consumer:

(1) Meets all WCCC eligibility requirements during the time ((he or she)) the consumer is claiming an underpayment; and

(2) Verifies all copayments made by the consumer to the provider during the time for which the consumer is claiming an underpayment.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-0271 Payment discrepancies—Consumer overpayments. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits when ((he or she)) the consumer was not eligible;

(b) Used care for an unapproved activity or for children not in ((his or her)) the consumer's WCCC household;

(c) Failed to report information under the requirements of WAC 170-290-0031 to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; or

(e) Received benefits for a child who was not eligible per WAC 170-290-0015 or 170-290-0020.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0030 through 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0280 Right to request an administrative hearing. (1) WCCC consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting WCCC benefits ((~~except for mass changes resulting from a change in policy or law~~)).

(2) Licensed or certified child care providers or in-home/relative providers may request hearings under chapter 388-02 WAC only for WCCC overpayments.

(3) To request a hearing, a consumer, the licensed/certified provider, or in-home/relative provider:

(a) Contacts the DSHS office which sent them the notice; or

(b) Writes to the office of administrative hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers; or

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.

(5) To request a hearing under the seasonal child care program, see WAC 170-290-3860 and 170-290-3865.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3520 Eligibility. (1) **Parents.** To be eligible for SCC((~~,~~)) the person applying for benefits must:

(a) ((~~Is~~)) Not currently be receiving temporary aid for needy families (TANF);

(b) Live((~~s~~)) in one of the following Washington state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;

(c) ((~~Has~~)) Have parental control of one or more children; and

(d) ((~~Is~~)) Be the child's:

(i) Parent, either biological or adopted;

(ii) Stepparent;

(iii) Legal guardian as verified by a legal or court document;

(iv) Adult sibling or step-sibling;

(v) Aunt;

(vi) Uncle;

(vii) Niece or nephew;

(viii) Grandparent; or

(ix) Any of the above relatives in (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt.

(e) Participate((~~s~~)) in an approved activity under WAC 170-290-3555;

(f) ((~~Has~~)) Have countable income at or below the maximum eligibility limit described in WAC 170-290-0005;

(g) Complete((~~s~~)) the ((~~SCC~~)) application for child care and DSHS verification process, regardless of other program benefits or services received; and

(h) Meet((~~s~~)) eligibility requirements for SCC described under part III of this chapter.

(2) **Children.** To be eligible for SCC, the child receiving SCC must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005((~~.~~)); and

(b) Live in Washington state((~~,~~)) and be:

(i) Less than age thirteen; or

(ii) Less than age nineteen((~~,~~)) and:

(A) Have a verified special need((~~,~~)) according to WAC 170-290-0220; or

(B) Be under court supervision.

(3) Consumers are not eligible for SCC program subsidies if they:

(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;

(b) Are receiving TANF benefits; or

(c) Are the only parent in the household and will be away from the home for more than thirty days in a row.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3530 Verifying consumers' and providers' information. DSHS verifies a consumer's information as provided in WAC 170-290-0012 and 170-290-0014.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3550 Eligibility—Special circumstances for two-parent families. (1) A consumer may be eligible for the SCC program when ((~~he or she~~)) the consumer is a parent in a two-parent family and both parents currently work in seasonally available agricultural related work.

(2) A consumer may be eligible for SCC if ((~~he or she~~)) the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.

(3) If a consumer claims one parent is not able to care for the children, the consumer must provide written documentation from ((~~a licensed professional~~)) an acceptable medical source (see WAC ((~~388-448-0020~~)) 388-449-0010) that states the:

(a) Reason the parent is not able to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3555 Eligibility—Approved activities. (1) A consumer may be eligible for SCC program subsidies for up to sixteen hours per day for the time ((~~he or she~~)) the consumer is involved in seasonally available agricultural related work in Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section;

(3) DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location;

(b) Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and ((~~he or she~~)) the consumer is still eligible and continues to need child care; or

(c) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3560 Consumers' rights. When a consumer applies for or receives SCC program subsidies, ((~~he or she~~)) the consumer has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Have the consumer's application accepted and acted upon within thirty days;

(3) Be informed, in writing, of the consumer's legal rights and responsibilities related to the SCC subsidy program;

(4) Have the consumer's information shared with other agencies only when required by federal or state regulations;

(5) Be allowed to choose a licensed or certified child care provider as long as the provider meets requirements in WAC 170-290-3750;

(6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3730;

(7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;

(8) Ask to speak to a supervisor or administrator at DSHS to review a decision or action affecting the consumer's benefits without affecting the consumer's right to an administrative hearing;

(9) Have interpreter or translator services provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(10) Refuse to speak to a fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA) when they ask to come into your home.

(a) This ((~~request~~)) refusal will not affect eligibility for SCC program subsidies.

(b) If the consumer refuses to cooperate with the investigator at a later date, it could affect ((~~his or her~~)) the consumer's SCC program subsidies;

(11) Access his or her child at all times while the child is in child care;

(12) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for the difference between the child care provider's private rate and the state maximum child care subsidy rate, when the provider's private rate for child care is higher than the maximum state rate; and

(14) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's registration fee and the state's maximum registration fee((~~,~~)) when the provider's registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care((~~,~~)) when the provider stops caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3565 Consumers' responsibilities. (1) When a person applies for or receives SCC program subsidies, the applicant or consumer must, as a condition of receiving those subsidies:

((~~(1)~~)) (a) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

((~~(2)~~)) (b) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

((~~(3)~~)) (c) Leave the consumer's children with ((~~his or her~~)) the eligible provider while the consumer is in SCC approved activities outside of the consumer's home;

((~~(4)~~)) (d) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

((~~(5)~~)) (e) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

((~~(6) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;~~

~~(7) In cases of overdue or past due copayments, the consumer, as a condition of maintaining his or her eligibility, must do one or more of the following:~~

~~(a) Pay past or overdue copayments;~~

~~(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:~~

~~(i) An installment payment plan;~~

~~(ii) A collection agency payment plan;~~

~~(iii) In-kind services in lieu of paying the copayment; or~~

~~(iv) Forgiveness of the copayment from the provider; or~~

~~(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up;~~

~~(8) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;~~

~~(9)~~)) (f) Document their child's attendance in ((~~subsidized~~)) child care by having the consumer or other person authorized by the consumer to take the child to or from child care:

((~~(a)~~)) (i) If the ((~~licensee~~)) provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

((~~(b)~~)) (ii) Record the child's attendance using an electronic system if used by the ((~~licensee;~~

~~(10)~~)) provider;

(g) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect ((~~his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter;~~

~~(11)~~)) the consumer's benefits;

(h) Cooperate (provide the information requested) with the child care subsidy audit process:

(i) A consumer becomes ineligible for SCC benefits upon a determination of noncooperation and remains ineligible until he or she meets child care subsidy audit requirements;

(ii) The consumer may become eligible again when he or she meets SCC requirements in Part III of this chapter and cooperates;

(iii) Care can begin on or after the date the consumer cooperated and meets SCC requirements in Part III of this chapter.

(i) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

((~~(a)~~)) (i) A department of health (DOH) medical exemption form signed by a health care professional; or

((~~(b)~~)) (ii) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

(j) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider; and

(k) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late.

(2) In cases of overdue or past due copayments, the consumer, as a condition of maintaining his or her eligibility, must do one or more of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a signed return receipt for correspondence not responded to, or a returned document that was not picked up.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3566 Subsidized child care providers' responsibilities. Licensed or certified child care providers who accept SCC subsidies must do the following:

(1) Comply with all of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC;

(2) Report pending charges or convictions to DSHS as provided in chapter 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC;

(3) Keep complete and accurate daily attendance records for children in their care((~~;~~)) and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records ((~~(~~))including records from the previous twelve months((~~)~~)), must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make ((~~available~~)) attendance records available as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Allow consumers access to their child at all times while the child is in care;

(5) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

(6) Follow billing procedures as described in the most recent version of "*Child Care Subsidies: A ((~~Booklet~~)) Guide for Licensed and Certified Family Home Child Care Providers*" ((~~revised 2012,~~)); "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers,*" including bill-

ing only for actual ((~~hours~~)) units of child care ((~~provided or allowed~~)) under WCCC billing guidelines;

(7) Not claim a payment in any month in which a child has not attended at least one day in that month;

(8) Invoice the state no later than one calendar year after the actual date of service;

(9) Not charge subsidized families for:

(a) The difference between the provider's customary rate and the maximum allowed state rate;

(b) Registration fees in excess of what is paid by subsidy program rules;

(c) ((~~Absence~~)) Absentee days ((~~in excess of five days per month, regardless of whether the child attended or not~~)) on days in which the child is not scheduled and authorized for care;

(d) Handling fees to process consumer copayments, child care services payments, or paperwork;

(e) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(f) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state; and

(10) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations, and notify DSHS within ten days of any suspension, revocation, or changes to their license.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3570 Notification of changes. When a consumer applies for or receives SCC program subsidies, ((~~he or she~~)) the consumer must:

(1) Notify DSHS, within five days, of any change in providers;

(2) Notify his or her provider within ten days when DSHS changes his or her child care authorization;

(3) Notify DSHS within ten days of any change in the consumer's:

(a) Number of child care hours needed (more or less hours);

(b) Child's eligibility for migrant Head Start or another child care program;

(c) Household income, including any new receipt of a TANF grant or child support increases or decreases;

(d) Household size such as any family member moving in or out of ((~~his or her~~)) the consumer's home;

(e) Employment hours such as starting, stopping or changing employers;

(f) Home address and telephone number; or

(g) Child support payments made by the consumer.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3580 Failure to report changes. (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-290-3850 ((~~or~~)), the consumer may have to pay additional costs, such as a higher copayment, or DSHS may terminate benefits.

(2) ((~~The consumer may receive an overpayment for what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, revised 2012).~~)) If an overpayment occurs, the consumer may receive an overpayment for what the provider has correctly billed, including absent days (see publication "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers*" and "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*").

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3590 DSHS's responsibilities to consumers. DSHS must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Complete applications for SCC program subsidies based on information the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

(3) Accept a variety of forms of verification and may not specify the type of documentation required;

(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;

(5) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC ((~~170-290-3550~~)) 170-290-0003;

(6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing;

(7) Provide prompt child care authorizations to a consumer's child care provider;

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3610 Countable income. DSHS counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;

(2) Unemployment compensation;

(3) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support; or

(c) For applicants or consumers who have an informal verbal or written child support agreement, the amount verified by a written agreement signed by the noncustodial parent (NCP); or

(d) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP.

(4) Supplemental security income (SSI);

(5) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

(6) Refugee assistance payments;

(7) Payments from the Veterans' Administration;

(8) Pensions or retirement income;

(9) Payments from labor and industries (L&I), or disability payments;

(10) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

(11) Other types of income not listed in WAC 170-290-3630; and

(12) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3630 Excluded income and deductions. (1) ((~~The SCC program~~)) DSHS does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Savings accounts;

(c) Money received from sale of real property, such as a house, or personal property, such as a car;

(d) Reimbursements, such as tax refunds;

(e) Earned income credits;

(f) Diversion cash assistance;

(g) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(h) Capital gains;

(i) Basic Food program benefits;

(j) Income earned by children as described in WAC 170-290-3540;

(k) Benefits received by children of Vietnam War veterans who are diagnosed with any form or manifestation of spina bifida except spina bifida occulta;

(l) Adoption support assistance and foster care payments; and

(m) Government economic stimulus payments.

(2) ((~~SCC~~)) DSHS deducts the amount a consumer pays for child support ((~~from his or her countable income when figuring his or her eligibility and copayment for the SCC~~)) under court order, division of child support administrative order, or tribal government order, from the consumer's other countable income when determining eligibility and copayment for the SCC program.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3640 Determining income eligibility and copayment. (1) For the SCC program, DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620;

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and

(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above the maximum eligibility limit as provided in WAC 170-290-0005, ((~~his or her~~)) the consumer's family is not eligible for the SCC program.

(3) The FPG is updated every year ((~~on April 1~~)). The SCC eligibility level is updated at the same time every year to remain current with the FPG.

(4) SCC shall assign a copayment amount based on the family's countable income. The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment when a consumer uses care for part of a month.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3650 Change in copayment. (1) A consumer's SCC program copayment could change when:

(a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;

(b) The consumer's family size increases;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or

(e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during ((~~his or her~~)) the eligibility period, the change is effective:

(a) On the first day of the month following the change, when:

(i) The report is made to DSHS or the information is learned by DSHS ((~~within~~)) ten or more days after the change as provided in WAC 170-290-3570; and

(ii) The consumer receives ten days written notice; ((~~and~~

~~(iii) The copayment is increasing;~~)) or

(b) On the first day of the month that the change occurred when;

(i) The report is made to DSHS or the information is learned by DSHS within ten days or less after the change as provided in WAC 170-290-3570; and

(ii) The copayment is decreasing.

(3) DSHS does not prorate when a consumer uses care for part of a month.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3665 When SCC program subsidies start. (1) SCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 and 170-290-0014 within thirty days of the date DSHS received the consumer's application ((~~or reapplication~~)) for SCC benefits;

(b) The consumer is working or participating in an approved activity under WAC 170-290-3555;

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits((~~; and~~

~~(d) The consumer's eligible licensed or certified provider is caring for his or her children~~)).

(2) If a consumer fails to turn in all information within thirty days from ((~~his or her~~)) the application date, the consumer must restart the application process.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

NEW SECTION

WAC 170-290-3675 When provider payments start. The provider is eligible to receive payment when both the following circumstances are met:

(1) The consumer has chosen the eligible provider (under WAC 170-290-0125) and the provider is caring for the children during an eligibility period; and

(2) DSHS notifies the provider that the consumer is eligible.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3730 When notice of payment changes is not required. DSHS does not give a consumer notice if the consumer:

(1) Tells DSHS that ((~~he or she~~)) the consumer no longer wants SCC; or

(2) Has not informed DSHS of ((~~his or her~~)) the consumer new mailing address.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and ((~~chapters~~)) 170-295, 170-296A, or ((~~170-151~~)) 170-297 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the DSHS region where the child resides; or

(3) Exempt from licensing but certified by DEL, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and

(c) Child care facilities operated on public school property by a school district.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3760 SCC subsidy rates((~~—Effective date~~)). State child care subsidy rates ((~~in this part are effective as of the date stated in WAC 170-290-0180~~)) are subject to legislative change.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205:

(a) A full day of child care when care is needed for five to ten hours per day;

(b) A half day of child care when care is needed for less than five hours per day;

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip/quality enhancement fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3800 Eligible provider capacity and payment. (1) DSHS may pay licensed and certified providers for authorized care up to the provider's licensed capacity as determined under WAC ((~~170-151-080~~)) 170-297-5625, 170-295-0080, or 170-296A-5700, as appropriate.

(2) Licensed providers may not bill the state for more than the number of children they have in their licensed capacity and who are authorized to receive child care subsidies.

(3) A violation of subsection (2) of this section may:

(a) Result in the immediate suspension of the provider's subsidy payments; and

(b) Establish a provider overpayment as provided in WAC 170-290-0268.

(4) As used in this section, "capacity" has the same meaning as defined in WAC ((~~170-151-010~~)) 170-297-0010, 170-295-0010, and 170-296A-0010.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3840 New eligibility period. (1) If a consumer wants to receive SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period. To determine if a consumer is eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for SCC program subsidies for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-3670 and 170-290-3750; and

(c) The consumer meets all SCC eligibility requirements.

(3) If DSHS determines that a consumer is eligible for SCC program subsidies based on his or her reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies. (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate, including special needs payment, but not including registration, field trip, and nonstandard hours bonus payments, for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not comply with the copayment requirements of WAC 170-290-3565 (6) and (7); or

(iv) Refuses to cooperate with the child care subsidy audit process or the DSHS office of fraud and accountability (OFA).

(2) A consumer might be eligible for SCC program subsidies again beginning on the date that the consumer:

(a) Meets all SCC program eligibility requirements;

(b) Complies with the copayment requirements of WAC 170-290-3565(6); and

(c) Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

WSR 16-06-084
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed February 26, 2016, 5:08 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 246-940-990 Certified animal massage practitioner, 246-841-990 Nursing assistant, and 246-830-990 Massage fees and renewal cycle. Proposing increases in application and renewal fees, clarification of which categories of fees require payment of HEAL-WA surcharge, and changes in formatting to make it easier for licensees to identify the fees they will be required to pay for animal massage practitioner, nursing assistant, and massage practitioner credentials.

Hearing Location(s): Department of Health, Point Plaza East, Room 153, 310 Israel Road, Tumwater, 98501, on April 28, 2016, at 2:00 p.m.

Date of Intended Adoption: May 5, 2016.

Submit Written Comments to: Sherry Thomas, P.O. Box 47850, Olympia, WA 98504-7850, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-4626, by April 28, 2016.

Assistance for Persons with Disabilities: Contact Sherry Thomas by April 18, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current licensing fees do not generate sufficient revenue to cover the full cost of administering these licensing programs. In response, the department is proposing to increase application and renewal fees for these professions. The remainder of the changes is [are] clarifications and formatting changes to make it easier for licensees to identify the fees they will be required to pay.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on licensure costs. Increasing fees to the proposed levels will more closely align revenue with the programs' expenses and enable reserves to be maintained should unanticipated events occur, such as increased disciplinary costs.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.-280.

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, Implementation, and Enforcement: Sherry Thomas, 111 Israel Road, Tumwater, WA 98501, (360) 236-4612.

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

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

February 26, 2016
Dennis E. Worsham
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-830-990 Massage fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
((~~Written examination and reexamination~~	~~$65.00~~
~~Practical examination and reexamination~~	~~50.00~~))
Original application	
Application and initial license	((~~90.00~~)) 125.00
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((~~65.00~~)) 90.00
Late renewal penalty	50.00
Expired license reissuance	50.00
UW online access fee (HEAL-WA)	16.00
Inactive license renewal	
Inactive license renewal	50.00
Expired inactive license reissuance	50.00
UW online access fee (HEAL-WA)	16.00
((~~Certification~~)) **Verification of license**	10.00
Duplicate license	10.00
Intraoral massage endorsement	25.00
((~~UW online access fee (HEAL-WA)~~	~~16.00~~))

AMENDATORY SECTION (Amending WSR 12-24-015, filed 11/27/12, effective 7/1/13)

WAC 246-841-990 Nursing assistant—Fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for registration credentials:

Title of Fee	Fee
Application - Registration	$((~~48.00~~)) 65.00
Renewal of registration	((~~53.00~~)) 70.00
Duplicate registration	10.00
Registration late penalty	((~~53.00~~)) 50.00
Expired registration reissuance	52.00

(3) The following nonrefundable fees will be charged for certification credentials:

Title of Fee	Fee
Application for certification	$((~~48.00~~)) 65.00
Certification renewal	((~~53.00~~)) 70.00
Duplicate certification	10.00
Certification late penalty	((~~53.00~~)) 50.00
Expired certification reissuance	52.00

(4) The following nonrefundable fees will be charged for medication assistant endorsement credentials:

Title of Fee	Fee
Application for endorsement	$25.00
Endorsement renewal	10.00

AMENDATORY SECTION (Amending WSR 11-14-026, filed 6/24/11, effective 7/25/11)

WAC 246-940-990 Certified animal massage practitioner—Fees and renewal cycle. (1) Certification must be

renewed every year on or before the animal massage practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for certification:

Title of Fee	Fee
Application for large animal certification	$((~~200.00~~)) 250.00
Application for small animal certification	$((~~200.00~~)) 250.00
Renewal of certification for large animal certification	((~~150.00~~)) 190.00
Renewal of certification for small animal certification	((~~150.00~~)) 190.00
Late renewal penalty fee per certification	((~~75.00~~)) 95.00
Expired credential reissuance fee per certification	((~~75.00~~)) 95.00
Duplicate credential per certification	30.00
((~~Certification~~)) Verification of credential per certification	30.00

WSR 16-06-087
PROPOSED RULES
HORSE RACING COMMISSION
[Filed February 29, 2016, 11:03 a.m.]

Supplemental Notice to WSR 16-02-065.

Preproposal statement of inquiry was filed as WSR 15-18-111.

Title of Rule and Other Identifying Information: WAC 260-70-650 Furosemide.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on April 8, 2016, at 9:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail dmoore@whrc.state.wa.us, fax (360) 459-6461, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Patty Brown by April 5, 2016, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a treatment time for the administration of furosemide.

Reasons Supporting Proposal: There is no time frame listed in which a veterinarian may administer furosemide prior to a race which is needed to prevent administration to [too] close to post time.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

February 29, 2016
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-036, filed 3/12/07, effective 4/12/07)

WAC 260-70-650 Furosemide. (1) Furosemide may be administered intravenously to a horse which is entered to compete in a race. Except under the instructions of an official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a urine sample, furosemide will be permitted only after an official veterinarian has placed the horse on the furosemide or bleeder list.

(2) The use of furosemide is permitted under the following circumstances:

(a) Furosemide must be administered on the grounds of the association, by a single intravenous injection((~~,~~)). Administration of furosemide must be no later than three hours prior to post time for the race for which the horse is entered without prior approval of a regulatory veterinarian.

(b) The furosemide dosage administered must not exceed 500 mg nor be less than 150 mg.

(c) The trainer of the treated horse must deliver to an official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission:

(i) The name of the horse, the horse's tattoo number, racetrack name, the date and time the furosemide was administered to the entered horse;

(ii) The dosage amount of furosemide administered to the entered horse; ((~~and~~))

(iii) The printed name and signature of the attending licensed veterinarian who administered the furosemide((~~.~~)); and

(iv) The signature of the trainer or his/her representative.

(d) Failure to administer furosemide in accordance with these rules may result in the horse being scratched from the race by the stewards.

(e) Test results must show a detectable concentration of the drug in the post-race serum, plasma or urine sample.

(i) The specific gravity of post-race urine samples may be measured to ensure that samples are sufficiently concentrated for proper chemical analysis. The specific gravity must not be below 1.010. If the specific gravity of the urine is found to be below 1.010 or if a urine sample is unavailable for testing, quantitation of furosemide in serum or plasma will be performed;

(ii) Quantitation of furosemide in serum or plasma must be performed when the specific gravity of the corresponding urine sample is not measured or if measured below 1.010.

Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

WSR 16-06-090
PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
[Filed February 29, 2016, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-176.

Title of Rule and Other Identifying Information: New WAC 390-17-019 Contribution limits to affiliated committees.

Hearing Location(s): 711 Capitol Way, Room 206, Olympia, WA, on April 28, 2016, at 9:30 a.m.

Date of Intended Adoption: April 28, 2016.

Submit Written Comments to: Lori Anderson, P.O. Box 40908, Olympia, WA 98504-0908 (mail), 711 Capitol Way, Room 206, Olympia, WA (physical), e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by April 20, 2016.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies that multiple committees established, maintained or controlled by a candidate subject to the limits set out in RCW 42.17A.405 or 42.17A.410 are affiliated for the purpose of receiving contributions from a particular contributor. Also clarifies that a caucus campaign committee and any other political committee established, maintained, or controlled primarily by the same legislative caucus as a whole, or the officers of the caucus, are affiliated for the purpose of receiving contributions. The proposal excludes ballot measure committees.

Reasons Supporting Proposal: After contribution limits were enacted by Initiative 134 in 1992, the public disclosure commission determined that multiple political committees established, maintained, or controlled by a person subject to limits were affiliated for the purpose of receiving contributions from a single source. The policy has become accepted practice and the commission now wishes to set it in rule to continue preventing contributors from circumventing limits through contributions made to various committees controlled by a person subject to limits.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A405 [42.17A.405] and 42.17A.410.

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: No increased costs to the agency are expected.

Name of Agency Personnel Responsible for Drafting: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; Implementation and Enforcement: Evelyn Lopez, Executive Director, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses. The public disclosure commission (PDC) is not subject to the requirement to prepare a school district fiscal impact statement, per RCW 28A.305.135 and 34.05.320.

A cost-benefit analysis is not required under RCW 34.05.328. PDC is not an agency listed in subsection (5)(a)(i) of RCW 34.05.328. Further, PDC does not voluntarily make that section applicable to the adoption of these rules pursuant to subsection (5)(a)(ii) and to date, the joint administrative rules review committee has not made the section applicable to the adoption of these rules.

February 29, 2016
Lori Anderson
Communications and
Training Officer

NEW SECTION

WAC 390-17-019 Contribution limits to affiliated committees. (1) **Intent.** The public disclosure commission enforces campaign contribution limits and other provisions of chapter 42.17A RCW. The commission finds that persons subject to contribution limits may establish, maintain, or control multiple political committees. This rule sets out which committees, excluding ballot measure committees, are affiliated for the purpose of receiving contributions.

(2) Persons subject to contribution limits may not circumvent those limits through contributions made to the various committees controlled by that person.

(3) The following committees are affiliated for purposes of this rule:

(a) The authorized committee of a candidate subject to contribution limits set out in RCW 42.17A.405 or 42.17A.410 and any other political committee established, maintained, or controlled primarily by that candidate are affiliated for the purpose of receiving contributions.

(b) A caucus campaign committee and any other political committee established, maintained, or controlled primarily by the same legislative caucus as a whole or the officers of that caucus are affiliated for the purpose of receiving contributions.

(4) As used in this rule, the terms "established, maintained, or controlled" means the ability to direct or participate, other than through a vote as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure.

WSR 16-06-091
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed March 1, 2016, 7:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-092.

Title of Rule and Other Identifying Information: WAC 468-38-100 Pilot/escort vehicle and operator requirements, revisions to this rule address recommendations in the

National Transportation Safety Board (NTSB) report on the collapse of the Skagit River Bridge.

WAC 468-38-155 Safety equipment for special permit moves, revisions to this rule reflect the national effort to harmonize safety equipment required when moving special motor vehicle permit loads.

Hearing Location(s): Washington State Department of Transportation, Nisqually Board Room 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on April 19, 2016, at 1:30 p.m.

Date of Intended Adoption: April 19, 2016.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-6391, by March 31, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by April 18, 2016, TTY (360) 705-7796 or (360) 705-6808.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will revise requirements for pilot/escort operators and pilot/escort vehicle requirements on recommendations from NTSB and a national effort, lead by the American Association of State Highway and Transportation Officials (AASHTO), for uniformity of safety equipment used when transporting permitted loads.

Revisions include pilot/escort operator certification requirements; following distances between a pilot/escort vehicle and transport vehicle when moving permitted loads. In addition, this proposal includes NTSB recommendation banning nonemergency use of electronic communication devices by pilot/escort operators when performing escorting duties of oversize loads.

The proposal also would revise requirements for safety equipment used on vehicles transporting oversize loads. Revisions include changes in display of oversize load signage and requirements for warning lights and flag placement.

Statutory Authority for Adoption: RCW 46.44.090 and 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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: No fiscal impact.

Name of Proponent: AASHTO and Western Association of State Highway and Transportation Officials, public.

Name of Agency Personnel Responsible for Drafting: James Wright, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-7341; and Enforcement: Captain Michael Dahl, WSP, 210 11th Street, General Administration Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal revises pilot/escort vehicle requirements and has no impact on reporting, recordkeeping, or any other compliance requirements or costs to businesses small or large.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs related to the revisions to be made by this proposal.

February 25, 2016
Kara Larson, Director
Torts, Claims,
and Records Management

AMENDATORY SECTION (Amending WSR 06-07-025, filed 3/7/06, effective 4/7/06)

WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) ((~~**When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load?**~~ ~~A pilot/escort vehicle(s)~~)) A certified pilot/escort operator, acting as a warning necessary to provide safety to the traveling public, must accompany an extra-legal load when:

(a) The vehicle(s) or load ((~~is over~~)) exceeds eleven feet ((~~wide.~~)) in width: Two pilot/escort vehicles are required on two lane ((~~roads~~)) highways, one in front and one ((~~in back~~)) at the rear.

(b) The vehicle(s) or load ((~~is over~~)) exceeds fourteen feet ((~~wide.~~)) in width: One escort vehicle is required at the rear ((~~of the movement~~)) on multilane highways.

(c) The vehicle(s) or load ((~~is over~~)) exceeds twenty feet ((~~wide.~~)) in width: Two pilot/escort vehicles are required on multilane undivided highways, one in front and one ((~~in back~~)) at the rear.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length ((~~plus~~)) including load of a tractor/trailer or truck/trailer combination((~~.~~)): One pilot/escort vehicle is required at the rear ((~~of the movement~~)) on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet((~~.~~)): One pilot/escort vehicle is required at the rear ((~~of the movement~~)) on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet((~~.~~)): One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds twenty feet((~~.~~)): One pilot/escort vehicle is required at the rear ((~~of the movement~~)) on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches((~~.~~)): One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all ((~~state~~)) highways ((~~and roads~~)).

(i) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination when measured from either side of the edge of the load or last vehicle in the combination, whichever is larger: One pilot/escort vehicle is required at the rear on all highways.

(j) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration. The flag person is not required to ride in the pilot/escort vehicle but may ride in the transport vehicle with transporter's authorization.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator((~~.~~)) and must comply with the following:

(a) A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties.

(b) A pilot/escort vehicle operator((~~s~~)) with a driver's license from a jurisdiction other than the state of Washington ((~~state~~)) may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office.

((~~Washington state~~)) (c) A pilot/escort vehicle operator certification does not exempt a pilot/escort operator from complying with all state laws and requirements of the state in which she/he is traveling.

(d) Every applicant for a state of Washington pilot/escort operator certificate shall attend an eight-hour classroom training course offered and presented by a business, organization, government entity, or individual approved by the department. At the conclusion of the course, the applicant will be eligible to receive the certification card after successfully completing a written test with at least an eighty percent passing score. State of Washington pilot/escort vehicle operator certification cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle. When the permit is a single trip extra-legal permit, displaying routing information, the pilot/escort operator(s) must have a copy of the permit, including all special conditions and attachments.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) ((~~Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.~~

~~(f)~~)) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

((~~(g)~~)) (f) Check two-way communication system to ensure clear communications between the pilot/escort vehicle(s) and the transport vehicle and predetermine the channel to be used.

(g) Acknowledge that nonemergency electronic communication is prohibited except communication between pilot/escort operator(s) and the transport vehicle during movement.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to allow time for the extra-legal vehicle to stop or take corrective action as necessary when notified by the front pilot/escort operator. Be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed ((~~one-half mile~~)) a distance between pilot/escort vehicle and extra-legal vehicle ((~~in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway~~)) that would interfere with maintaining clear two-way radio communication; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Pilot/escort operators shall not perform tillerman duties while performing escorting duties. For this section, tillerman refers to an individual that operates the steering of the trailer or trailing unit of the transport vehicle; and

(h) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) **What kind of vehicle can be used as a pilot/escort vehicle?** In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck, including a nonplacarded service truck;

(b) Not exceed a maximum gross vehicle weight or gross weight rating of ((~~fourteen~~)) sixteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; and

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle.

(f) Not tow a trailer while escorting.

(9) **In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?**

(a) A minimum of ((~~two~~)) one flashing or rotating amber (yellow) light((~~s~~)) or strobe, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle and visible a full three hundred sixty degrees around the pilot/escort vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(d) Nonemergency electronic communications is prohibited except communication between the pilot/escort vehicle(s) and the transport vehicle during movement.

(10) **What additional or specialized equipment must be carried in a pilot/escort vehicle?**

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The upper portion of a height pole shall be constructed of flexible material to prevent damage to wires, lights, and other overhead objects or structures. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) **Can the pilot/escort vehicle carry passengers?** A pilot/escort vehicle may not contain passengers, human or animal, except ((for a)) that:

(a) A certified individual in training status or necessary flag person may be in the vehicle with the approval of the pilot/escort operator.

(b) A service animal may travel in the pilot/escort vehicle but must be located somewhere other than front seat of vehicle.

(12) **Can the pilot/escort vehicle carry any other items, equipment, or load?** Yes, as long as the items, equipment or load have been properly secured((: Provided)); provided that, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

(13) **Can a pilot/escort vehicle escort more than one extra-legal load at the same time?** No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) **When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit((, or in rule)). The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. The height measuring device (pole) shall be mounted on the front of the lead pilot/escort vehicle. When not in the act of escorting an extra-legal height move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) **Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-155 Safety equipment for special permit moves. In addition to any codified vehicle safety requirements, what other safety equipment may be required on a special permit move? The following items may be required on a vehicle or vehicle combination making a move under special permit:

(1) **Brakes.**

(a) Braking equipment must comply with the performance and maintenance requirements of RCW 46.37.360, unless specifically stated on the special permit.

(b) A special permit will not be issued to a vehicle "in tow" of another vehicle without brakes unless a three-axle truck or truck-tractor with a minimum unladen weight of fifteen thousand pounds is employed as the power unit. The power unit must also have sufficient power and brakes to control the towed unit at all times.

(2) **Drawbar—Towline.**

(a) The drawbar or other connection between vehicles in combination must be of sufficient strength to hold the weight of the towed vehicle on any grade where operated.

(b) No trailing unit shall whip, weave, or oscillate or fail to follow substantially in the course of the towing vehicle.

(3) **Flags.**

(a) Flags must be displayed on all four corners of all overwidth loads, and at the extreme ends of all protrusions, projections, or overhangs((.

(b) Flags must be allowed to wave freely.

(c) All flags used to identify the extremities of a load must be clean, bright red, and at least twelve inches square.

(d))) as required by RCW 46.37.140. During hours of darkness, lights as required by RCW 46.37.140 shall be located at each point where flags are required.

(b) When the distance between the towed vehicle and the towing vehicle exceeds fifteen feet, a white flag or cloth not less than ((twelve)) eighteen inches square must be fastened at the approximate middle of the span.

(4) **Lights.** Vehicles, whether factory direct or custom built, used in the transport of extra-legal loads must be equipped with brake lights and turn signals as required by RCW 46.37.200.

(5) **Two-way communications.** When pilot/escort vehicle(s) are required, the transport vehicle must be equipped with a two-way radio communications system capable of providing reliable two-way voice communications at all times between the operators of the pilot/escort vehicle(s) and the transport vehicle.

(6) **Rear-view mirrors.**

(a) Rear-view mirrors must be mounted in compliance with RCW 46.37.400.

(b) Pilot/escort vehicles may be used in lieu of the two hundred-foot rear sight/distance requirement in RCW 46.37.400.

(((6))) (7) **Safety chains and devices.**

(a) A load being moved by special permit must be securely fastened and protected by safety chains or other load securing devices pursuant to *Code of Federal Regulation*, 49 C.F.R. Part 393.100.

(b) Dragging of the load on the highway shall not be permitted.

(c) A vehicle with a boom or other aerial device attached must have the boom or device secured in such a manner that it cannot elevate (ratchet up) or sway during transport.

((~~(7)~~)) (8) **Signs.**

(a) ((~~An "OVERSIZE LOAD" sign must be mounted in the front of the towing vehicle at a height of five feet from ground level. If the towing vehicle cannot accommodate the five-foot height, the sign should be placed as high as practicable on the vehicle or load.~~

~~(b) An "OVERSIZE LOAD" sign must be mounted on the rear of the vehicle, or towed vehicle if in combination, at a height of five to seven feet from ground level. If the towed vehicle cannot accommodate the five- to seven-foot height for the sign, the sign should be placed as high as practicable on the vehicle or load.~~

~~(c)~~)) Warning signs displaying "OVERSIZE LOAD" shall be mounted in the front and rear of the transporting vehicle where the lights and license plate(s) are not blocked and the sign is visible from the front and rear of the transport vehicle.

(b) Signs are to be displayed only during transit of an over dimensional load and must be removed or retracted at all other times.

((~~(d)~~)) (c) An "OVERSIZE LOAD" sign must be at least seven feet wide and eighteen inches high with black lettering at least ten inches high in ((~~1.41-inch~~)) with a brush stroke between 1.4 and 1.5 inches on yellow background.

WSR 16-06-092
WITHDRAWL OF PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD
(By the Code Reviser's Office)
[Filed March 1, 2016, 8:58 a.m.]

WAC 136-150-022, proposed by the county road administration board in WSR 15-17-006, appearing in issue 15-17 of the Washington State Register, which was distributed on September 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-06-093
WITHDRAWL OF PROPOSED RULES
COUNTY ROAD ADMINISTRATION BOARD
(By the Code Reviser's Office)
[Filed March 1, 2016, 8:59 a.m.]

WAC 136-25-010, 136-25-020, 136-25-030, 136-25-040 and 136-25-050, proposed by the county road administration board in WSR 15-17-007, appearing in issue 15-17 of the Washington State Register, which was distributed on September 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-06-094
WITHDRAWL OF PROPOSED RULES
BUILDING CODE COUNCIL
(By the Code Reviser's Office)
[Filed March 1, 2016, 9:00 a.m.]

WAC 51-11C-40526, 51-11C-40527 and 51-11C-40528, proposed by the building code council in WSR 15-17-037, appearing in issue 15-17 of the Washington State Register, which was distributed on September 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-06-095
WITHDRAWL OF PROPOSED RULES
WASHINGTON STATE PATROL
(By the Code Reviser's Office)
[Filed March 1, 2016, 9:00 a.m.]

WAC 212-17-062, proposed by the Washington state patrol in WSR 15-17-113, appearing in issue 15-17 of the Washington State Register, which was distributed on September 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-06-096
WITHDRAWL OF PROPOSED RULES
PUBLIC DISCLOSURE COMMISSION
(By the Code Reviser's Office)
[Filed March 1, 2016, 9:01 a.m.]

WAC 390-37-055, 390-37-056, 390-37-057 and 390-37-058, proposed by the public disclosure commission in WSR 15-17-133, appearing in issue 15-17 of the Washington State Register, which was distributed on September 2, 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 16-06-098
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 1, 2016, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-153.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food?

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

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

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

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by March 22, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-450-0200 to clarify the acceptability of medical marijuana expenses as an excess medical expense deduction so it is applied consistently with federal regulations under Title 7 C.F.R. § 273.9 (d)(3)(B).

Reasons Supporting Proposal: The department of social and health services (DSHS) will clarify whether medical marijuana expenses are acceptable as a medical expense and allowable for supplemental nutrition assistance program recipients by modifying this WAC to reflect that medical marijuana is not allowable under the Code of Federal Regulations.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9.

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: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4611.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses. It only impacts DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is 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."

February 25, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for Basic Food? (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over thirty-five dollars each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs except medical marijuana;

(d) Over the counter drugs;

(e) Eye glasses;

(f) Medical supplies other than special diets;

(g) Medical equipment or medically needed changes to your home;

(h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;

(i) Long distance calls to a medical provider;

(j) Hospital and outpatient treatment including:

(i) Nursing care; or

(ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.

(k) Health insurance premiums paid by the person including:

(i) Medicare premiums; and

(ii) Insurance deductibles and copayments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 182-519-0010. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a twenty-four-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first twelve months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by health care insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

WSR 16-06-102
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed March 1, 2016, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-118 on January 6, 2016.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, Room 635, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, April 5, 2016, at 1 p.m. to 2 p.m.

Date of Intended Adoption: On or after May 3, 2016.

Submit Written Comments to: Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail rules.coordinator@dfw.wa.gov, fax (360) 902-2183, by April 4, 2016.

Assistance for Persons with Disabilities: Contact Tami Lininger by April 4, 2016, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound.

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

Statute Being Implemented: RCW 77.12.045, 77.12.047, 77.04.012, 77.04.020, and 77.04.055.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2799; and Enforcement: Steven Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the

harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

None, the proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those used in the previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Jacalyn Hursey, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2861, fax (360) 902-2183, e-mail rules.coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

March 1, 2016
Jacalyn M. Hursey
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-17-034, filed 8/11/15, effective 9/11/15)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W),

then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

((~~(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'46"N, 122°36'32"W) to the red and green buoy southeast of Point Francis (48°40'27"N, 122°35'24"W), then to the northernmost tip of Eliza Island (48°39'38"N, 122°35'14"W), then along the eastern shore of the island to its southernmost tip (48°38'40"N, 122°34'57"W) and then north of a line from the southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September 1 through September 21 in this area must release coho.~~))

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho ((~~and chum~~)) seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Areas 12, 12B, and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12 - ((~~(1)~~)) Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

((~~(2) Additional purse seine chum seasonal closure: Those waters of Area 12 within 2 statute miles of the Hood Canal Bridge are closed to purse seines on October 26 and November 3.~~))

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

((~~**Areas 12, 12B and 12C** - Those waters within 1,000 feet of the eastern shore.~~))

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

((~~**Area 12 - Chum seasonal closures:**~~

~~(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 27 and November 3.~~

~~(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.~~))

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due

north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 15-17-034, filed 8/11/15, effective 9/11/15)

WAC 220-47-311 Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME		DATE
7, 7A:	7AM - 6PM	-	10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29((~~, 10/30, 10/31~~))
	7AM - 5PM	-	10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

AREA	TIME		DATE
((~~7B, 7C:~~	~~6AM - 9PM~~	-	~~8/12~~))
7B, 7C:	6AM - 8PM	-	((~~8/19, 8/26, 9/2~~)) 8/17, 8/24, 8/31, 9/5, 9/7, 9/9
7B:	((~~6AM - 8PM~~	-	~~9/7, 9/9, 9/11~~))
	7AM - 7PM	-	9/12, 9/14, 9/16((~~, 9/18~~))
	7AM ((~~9/20~~)) 9/18	-	6PM ((~~10/24~~)) 10/29
	7AM ((~~10/26~~)) 10/31	-	4PM ((~~10/30~~)) 11/4
	7AM ((~~11/2~~)) 11/7	-	4PM ((~~11/6~~)) 11/11
	7AM ((~~11/9~~)) 11/14	-	4PM ((~~11/13~~)) 11/18
	7AM ((~~11/16~~)) 11/21	-	4PM ((~~11/20~~)) 11/25
	7AM ((~~11/23~~)) 11/28	-	4PM ((~~11/27~~)) 12/2

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

AREA	TIME		DATE
((~~8:~~	~~6AM - 8PM~~	-	~~8/25, 9/2, 9/9~~))
8A:	((~~7AM - 7PM~~	-	~~8/18, 8/26, 9/1~~))
	7AM - 7PM	-	Limited participation - Two boats ((~~9/14, 9/21~~)) 9/19, 9/26
8D:	7AM - 7PM	-	((~~9/21, 9/28, 10/5~~)) 9/19, 9/26, 10/03
	7AM - 6PM	-	((~~10/12, 10/20, 10/26, 10/28~~)) 10/10, 10/17, 10/25, 10/27, 10/31
	7AM - 5PM	-	((~~11/3, 11/9, 11/11, 11/17, 11/24~~)) 11/8, 11/10, 11/14, 11/22
((~~10:~~	~~7AM - 7PM~~	-	~~Limited participation - Five boats only 8/19, 8/25, 8/27, 8/31, 9/2~~))
10, 11:	7AM - 6PM	-	((~~10/15, 10/19, 10/26~~)) 10/17, 10/25, 10/27, 10/31
	7AM - 5PM	-	((~~11/3, 11/9, 11/11, 11/17, 11/24~~)) 11/08, 11/10, 11/14, 11/22
12, 12B:	7AM - 6PM	-	((~~10/15, 10/19, 10/26~~)) 10/17, 10/25, 10/27, 10/31
	7AM - 5PM	-	((~~11/3, 11/9, 11/11, 11/17~~)) 11/08, 11/10, 11/14
12C:	7AM - 5PM	-	((~~11/3, 11/9, 11/11, 11/17, 11/24~~)) 10/31, 11/08, 11/10, 11/14, 11/22

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.

(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

(d) All other saltwater and freshwater areas - Closed for all species at all times.

AMENDATORY SECTION (Amending WSR 15-17-034, filed 8/11/15, effective 9/11/15)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME			DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	9/21, 9/22, 9/23, ((~~9/24, 9/25~~)) 9/26, 9/27, 9/28, 9/29, 9/30, ((~~10/1, 10/2~~)) 10/3, 10/4, 10/5, 10/6, 10/7, ((~~10/8, 10/9~~)) 10/10, 10/11, 10/12, 10/13, 10/14, ((~~10/15, 10/16~~)) 10/17, 10/18, 10/19, 10/20, 10/21, ((~~10/22, 10/23~~)) 10/24, 10/25, 10/26, 10/27, 10/28((~~, 10/29, 10/30~~))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

AREA	TIME			DATE(S)	MINIMUM MESH
7, 7A:	7AM	-	Midnight; use of recovery box required	10/10, 10/11, 10/12, 10/13, 10/14, 10/15, 10/16, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22	6 1/4"
	7AM	-	Midnight	((~~10/18, 10/19, 10/20, 10/21, 10/22,~~)) 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12	6 1/4"

Note: In Areas 7 and 7A after October 9 ((~~but~~)) and prior to October ((~~18~~)) 23, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

AREA	TIME			DATE(S)	MINIMUM MESH
7B, 7C:	7PM	-	8AM	NIGHTLY ((~~8/9, 8/11, 8/12~~)) 8/14, 8/15, 8/16, 8/17, ((~~8/18, 8/19~~)) 8/21, 8/22, 8/23, 8/24((~~, 8/25, 8/26~~))	7"
7B, 7C:	7AM ((~~8/30~~)) 8/28	-	7AM ((~~9/4~~)) 9/2		5"
7B:	7AM ((~~9/6~~)) 9/4	-	7AM ((~~9/11~~)) 9/9		5"
	7AM ((~~9/13~~)) 9/11	-	7AM ((~~9/18~~)) 9/16		5"
	7AM ((~~9/20~~)) 9/18	-	Midnight ((~~10/23~~)) 10/29		5"
	7AM ((~~10/26~~)) 10/31	-	4PM ((~~10/30~~)) 11/4		6 1/4"
	6AM ((~~11/2~~)) 11/7	-	4PM ((~~11/6~~)) 11/11		6 1/4"
	6AM ((~~11/9~~)) 11/14	-	4PM ((~~11/13~~)) 11/18		6 1/4"
	((~~6AM 11/16~~)) 7AM 11/21	-	4PM ((~~11/20~~)) 11/25		6 1/4"
	((~~7 AM 11/23~~)) 8AM 11/28	-	4PM ((~~11/27~~)) 12/2		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

AREA	TIME			DATE(S)	MINIMUM MESH
8:	5AM	-	11PM	((~~8/26, 9/1, 9/8~~)) closed	5"

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

AREA	TIME			DATE(S)	MINIMUM MESH
8A:	((~~5AM~~	~~-~~	~~11PM~~	~~8/19, 8/25, 9/2~~))	5"

AREA	TIME			DATE(S)	MINIMUM MESH
	6PM	-	8AM	Limited participation; 2 boats only ((9/16)) 9/21	5"
	6PM	-	8AM	NIGHTLY ((9/22, 9/23)) 9/26, 9/28	5"
Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.					
8D:	6PM	-	8AM	NIGHTLY ((9/20, 9/24, 9/27, 10/1, 10/4, 10/8)) 9/18, 9/22, 9/25, 9/29, 10/2, 10/6	5"
	6PM ((9/21)) 9/19	-	8AM ((9/24)) 9/22		5"
	6PM ((9/28)) 9/26	-	8AM ((10/1)) 9/29		5"
	6PM ((10/5)) 10/3	-	8AM ((10/8)) 10/6		5"
	((5PM	-	8AM	10/11, 10/15	5"))
	((5PM 10/12	-	8AM 10/15		5"))
	5PM	-	9AM	((10/18, 10/22, 10/25, 10/29)) 10/9, 10/13, 10/16, 10/20, 10/27, 10/30, 11/3	5"
	5PM 10/10	-	9AM 10/13		5"
	5PM ((10/19)) 10/17	-	9AM ((10/22)) 10/20		5"
	5PM ((10/26)) 10/24	-	9AM ((10/29)) 10/27		5"
	((4PM	-	8AM	11/1, 11/5	5"))
	((4PM 11/2)) 5PM 10/31	-	((8AM 11/5)) 9AM 11/3		5"
	6AM	-	6PM	((11/11, 11/12, 11/18, 11/19)) 11/9, 11/10, 11/16, 11/17	6 1/4"
	6AM	-	4PM	((11/13, 11/20)) 11/11, 11/18	6 1/4"
	7AM	-	6PM	((11/25, 11/26)) 11/23, 11/24	6 1/4"
	7AM	-	4PM	((11/27)) 11/25	6 1/4"
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM ((8/16)) 8/14	-	7PM ((10/31)) 10/29		5"
Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.					
10:	7PM	-	7AM	((Limited participation - 5 boats only 8/18, 8/24, 8/26, 9/1, 9/3)) closed	4 1/2" minimum and 5 1/2" maximum
Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.					
10, 11:	5PM	-	9AM	NIGHTLY ((10/13)) 10/18, 10/20, ((10/22, 10/27, 10/29)) 10/23, 11/1, 11/3	6 1/4"
	5PM	-	7AM	NIGHTLY ((10/14)) 10/26	6 1/4"
	4PM	-	8AM	((11/1, 11/4, 11/12)) 11/6, 11/15, ((11/18, 11/22, 11/23)) 11/17, 11/20, 11/23	6 1/4"

AREA	TIME			DATE(S)	MINIMUM MESH
	4PM	-	7AM	NIGHTLY ((~~11/10~~)) 11/9	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.					
12, 12B:	7AM	-	8PM	((~~10/13, 10/14~~)) 10/18, 10/20((~~, 10/22~~))	6 1/4"
	7AM	-	7PM	((~~10/27, 10/29~~)) 10/24, 10/26, 11/1, 11/3	6 1/4"
	6AM	-	6PM	((~~11/2, 11/4, 11/10, 11/12, 11/16, 11/18~~)) 11/7, 11/9, 11/15, 11/17	6 1/4"
12C:	7AM	-	7PM	11/1, 11/3	
((~~12C:~~))	6AM	-	6PM	((~~11/2, 11/4, 11/10, 11/12, 11/16, 11/18~~)) 11/7, 11/9, 11/15, 11/17	6 1/4"
	7AM	-	6PM	11/21, 11/23((~~, 11/24~~))	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending WSR 15-17-034, filed 8/11/15, effective 9/11/15)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	((~~9/27 - 11/7~~)) 9/18 - 11/12

(2) It is unlawful at all times to retain unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 15-17-034, filed 8/11/15, effective 9/11/15)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME			DATE(S)
((~~6D:~~	~~7AM~~	~~-~~	~~7PM~~	~~Limited participation - 2 boats only 7/20, 7/21, 7/22, 7/23, 7/24, 7/27, 7/28, 7/29, 7/30, 7/31~~))
12A:	7AM	-	7PM	((~~8/21~~)) 8/22, 8/23, 8/24, 8/25, 8/26, ((~~8/27, 8/28~~)) 8/29, 8/30, 8/31, 9/1, 9/2, ((~~9/3, 9/4~~)) 9/5, 9/6, 9/7, 9/8, 9/9, ((~~9/10, 9/11~~)) 9/12, 9/13, 9/14, 9/15, 9/16, ((~~9/17, 9/18~~)) 9/19, 9/20, 9/21, 9/22, 9/23, ((~~9/24, 9/25~~)) 9/26, 9/27, 9/28, 9/29, 9/30
12H:	7AM	-	7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

WSR 16-06-110
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed March 2, 2016, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-075.

Title of Rule and Other Identifying Information: Amendments to ten rules in chapter 458-53 WAC as follows: WAC 458-53-020, 458-53-030, 458-53-050, 458-53-070, 458-53-080, 458-53-100, 458-53-140, 458-53-160, 458-53-200, and 458-53-210. The following three rules are also being repealed: WAC 458-53-095, 458-53-105, and 458-53-135. These rules describe procedures for determination of indicated ratios of real and personal property for each county to accomplish the equalization of property values. Procedures in this chapter are designed to promote uniformity and equity in property taxation throughout the state.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on April 7, 2016, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.*

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: April 14, 2016.

Submit Written Comments to: Mark E. Bohe, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by April 7, 2016.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules describe the procedures for determination of indicated ratios of real and personal property for each county. These amendments are updates to the procedures and also include language needed for marijuana grow operations subsequent to the passage of 2E2SHB 2136, 2015 2nd sp. sess., chapter 4, Laws of 2015.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.48.075.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

March 2, 2016
Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

(1) "Account" means a listing of personal property as shown on the county assessment record.

(2) "Advisory value" means a valuation determination by the department, made at the request of a county assessor.

(3) "Appraisal" means the determination of the market value of real property, or for real property classified under chapter 84.34 RCW, the determination of the current use value.

(4) "Assessed value" means the value of real or personal property determined by an assessor.

(5) "Audit" means the determination of the market value of personal property.

(6) "Average assessed value" is the total assessed value of a sample group of real or personal property divided by the number of properties in the sample group.

(7) "Average personal property market value" is the total value of a sample group as determined from personal property audits divided by the number of audits in the sample group.

(8) "Average real property market value" is the total sales price, less one percent, of a sample group of real property divided by the number of properties in the sample group, or the total appraised value of a sample group of real property divided by the number of appraisals in the same group.

(9) "Department" means the department of revenue.

(10) "Land Use Code" means the identification of each real property parcel by numerical digits as representations of the major use of the property. The Land Use Code is derived from the Standard Land Use Coding Manual as prepared by the Federal Bureau of Public Roads and includes use classifications specified by state law.

(11) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

(12) "Personal property" means all taxable personal property required by law to be reported by a taxpayer.

(13) "Ratio" is the percentage relationship of the assessed value of real or personal property to the market value of real or personal property.

(14) "Ratio study" is the department's annual comparison of the relationship between the county assessed values of real and personal property with the market value of that property as determined by the department's analysis of sales, appraisals, and/or audits or the comparison of the relationship between the county assessed values of real property classified under chapter 84.34 RCW (current use) with the current use value of that property as determined by the department.

(15) "Real property" means all parcels of taxable real property as shown on the county assessment record.

(16) "Sales study" is the comparison of the assessed value of real property with the selling price of the same property.

(17) "Strata" refer to classes of property grouped by assessed value and/or use categories.

(18) "Stratification" means the grouping of the real or personal property assessment records into specific assessed value and/or use categories for ratio sampling and calculation purposes.

(19) "Stratum" refers to a grouping of property with a given range of assessed values and/or having the same use category.

(20) "Valid sale(s)" means a sale of real property that occurs between ((~~August~~)) May 1 preceding January of the current assessment year and ((~~March 31~~)) April 30 of the current assessment year, and the transfer document is a warranty deed or real estate contract, and the sale is not a type listed in WAC 458-53-080(2).

AMENDATORY SECTION (Amending WSR 02-14-031, filed 6/24/02, effective 7/25/02)

WAC 458-53-030 Stratification of assessment rolls—Real property. (1) **Introduction.** This rule explains the stratification process for real property. The stratification process is the grouping of real property within each county into homogeneous classifications based upon certain criteria in order to obtain representative samples. Stratification is used in determining the number of appraisals to be included in the ratio study and also for ratio calculation. The county's most current certified assessment rolls are used for stratification. Counties must stratify rolls using a land use code stratification system as prescribed by the department. (See RCW 36.21.100.)

(2) **Stratification—Parcel count and total value—Exclusions.** The stratification of the real property assessment rolls must include a parcel count and a total value of the taxable real property parcels in each stratum, excluding the following:

(a) Designated forest lands.(See chapter 84.33 RCW);

(b) Timberland classified under chapter 84.34 RCW. (See RCW 84.34.060);

(c) Current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-095(3);

(d) State assessed properties; and

(e) State-owned game lands as defined in RCW 77.12.-203(2).

(3) **Stratification—By county.** For the real property ratio study, the assessment roll must be stratified for individual counties according to land use categories and substratified by value classes as determined by the department. Stratification will be reviewed at least every other year by the department to determine if changes need to be made to improve sampling criteria. After the strata have been determined, the department will notify the counties of the strata limits, and each county must provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample;

(ii) The land use code for each sample;

(iii) The previous year's assessed value for each sample;

(iv) The current year's assessed value for each sample; and

((~~(iv)~~)) (v) The actual number of samples;

(b) The total number of real property parcels in each stratum; and

(c) The total assessed value in each stratum for both the previous year and the current year.

(4) **Counties to provide information timely.** The stratification information described in subsection (3) of this rule must be provided by the counties to the department in a timely manner to enable the department to certify the preliminary ratios in accordance with WAC 458-53-200(1). Failure to provide the information in a timely manner will result in the department using its best estimate of stratum values to calculate the real property ratio.

(5) **Standard two-digit land use code.** The following two-digit land use code will be used as the standard to identify the actual use of the land. Counties may elect to use a more detailed land use code system using additional digits, however, no county land use code system may use fewer than the standard two digits.

RESIDENTIAL

11	Household, single family units
12	Household, 2-4 units
13	Household, multiunits (5 or more)
14	Residential condominiums
15	Mobile home parks or courts
16	Hotels/motels
17	Institutional lodging
18	All other residential not elsewhere coded
19	Vacation and cabin

MANUFACTURING

21	Food and kindred products
22	Textile mill products
23	Apparel and other finished products made from fabrics, leather, and similar materials
24	Lumber and wood products (except furniture)
25	Furniture and fixtures
26	Paper and allied products
27	Printing and publishing
28	Chemicals
29	Petroleum refining and related industries
30	Rubber and miscellaneous plastic products
31	Leather and leather products
32	Stone, clay and glass products
33	Primary metal industries
34	Fabricated metal products
35	Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing

36 Not presently assigned

37 Not presently assigned

38 Not presently assigned

39 Miscellaneous manufacturing

TRANSPORTATION, COMMUNICATION, AND UTILITIES

41 Railroad/transit transportation

42 Motor vehicle transportation

43 Aircraft transportation

44 Marine craft transportation

45 Highway and street right of way

46 Automobile parking

47 Communication

48 Utilities

49 Other transportation, communication, and utilities not classified elsewhere

TRADE

50 Condominiums - Other than residential condominiums

51 Wholesale trade

52 Retail trade - Building materials, hardware, and farm equipment

53 Retail trade - General merchandise

54 Retail trade - Food

55 Retail trade - Automotive, marine craft, aircraft, and accessories

56 Retail trade - Apparel and accessories

57 Retail trade - Furniture, home furnishings and equipment

58 Retail trade - Eating and drinking

59 Other retail trade

SERVICES

61 Finance, insurance, and real estate services

62 Personal services

63 Business services

64 Repair services

65 Professional services

66 Contract construction services

67 Governmental services

68 Educational services

69 Miscellaneous services

CULTURAL, ENTERTAINMENT AND RECREATIONAL

71 Cultural activities and nature exhibitions

72 Public assembly

73 Amusements

74 Recreational activities

75 Resorts and group camps

76 Parks

77 Not presently assigned

78 Not presently assigned

79 Other cultural, entertainment, and recreational

RESOURCE PRODUCTION AND EXTRACTION

81 Agriculture (not classified under current use law)

82 Agriculture related activities

83 Agriculture classified under current use chapter 84.34 RCW

84 Fishing activities and related services

85 Mining activities and related services

86 ((~~Not presently assigned~~)) Marijuana grow operations

87 Not presently assigned

88 Designated forest land under chapter 84.33 RCW

89 Other resource production

UNDEVELOPED LAND AND WATER AREAS

91 Undeveloped land

92 Noncommercial forest

93 Water areas

94 Open space land classified under chapter 84.34 RCW

95 Timberland classified under chapter 84.34 RCW

96 Not presently assigned

97 Not presently assigned

98 Not presently assigned

99 Other undeveloped land

AMENDATORY SECTION (Amending WSR 02-14-031, filed 6/24/02, effective 7/25/02)

WAC 458-53-050 Land use stratification, sales summary and abstract report. Stratification of the assessment rolls, the annual sales summary, and the abstract report to the department for real property will be based on the following abstract categories:

	Abstract Category	Land Use Code
1.	Single family residence	11, 14, 18, 19
2.	Multiple family residence	12, 13
3.	Manufacturing	21 through 39
4.	Commercial	15, 16, 17, 41-49, 50-59, 61-69, 71-79
5.	Agricultural	81
6.	Agricultural (current use law)	83
7.	Forest lands (chapter 84.33 RCW)	88

	Abstract Category	Land Use Code
8.	Open space (current use law)	94
9.	Timberland (current use law)	95
10.	Other	82, 84, 85, 86, 89, 91, 92, 93, 96-99

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-070 Real property sales studies. (1) **Sales study data.** The basis of the real property ratio study is data obtained from real estate excise tax affidavits from each county. The department will supplement the sales study with appraisals when it is determined that the sales are insufficient to represent the level of assessment. The appraisals will be selected according to criteria set forth in WAC 458-53-130.

(2) **Time period for data used.** The sales study will only use sales occurring in the ((~~eight-month~~)) twelve-month period between ((~~August~~)) May 1 preceding January of the current assessment year and ((~~March 31~~)) April 30 of the current assessment year.

(3) **Deduction from sale price.** One percent will be deducted from the sale price shown on all valid real estate excise tax affidavits as an adjustment for values transferred that are not assessable as real property.

(4) **Sales not included in the study—Assessment rolls using other than market value—New construction.** Individual sales that show a sale price to assessed value ratio of under twenty-five percent, or over one hundred seventy-five percent shall be excluded from consideration in the study. However, if the number of individual sales meeting either one of these criteria exceeds five percent of the total number of valid sales for a county, then these sales shall be considered in the valid sales study.

(a) The exclusion of valid sales in accordance with this subsection shall not apply in situations where other than market value of a particular type of property is being listed on the assessment rolls of the county, as disclosed in any examination by the department. If other than market value is being listed on the assessment rolls for a particular type of real or personal property and, after notification by the department, is not corrected, the department shall adjust the ratio of that type of property, which adjustment shall be used in determining the county's indicated personal or real property ratio. When a particular type of property is found to be at other than market value, that type of property shall be separated from the other properties in the computation of the ratio. The department shall compile the total assessed value and total market value for that type of property, and it shall be included in the ratio as provided in WAC 458-53-135(3) and 458-53-160(3).

(b) The exclusion of valid sales in accordance with this subsection shall not apply to sales of property on which there is new construction value that has not yet been placed on the county assessment roll.

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-080 Real property sales sample selection. (1) **Sales included.** Except as provided in subsection (2) of this section, the sales study shall consider all transactions involving a warranty deed or a real estate contract that occurred during the ((~~eight-month~~)) twelve-month period described in WAC 458-53-070(2). Sales of mobile homes situated on land owned by the owner of the mobile home shall also be included in the real property ratio study when the mobile home meets the definition of real property as defined in RCW 84.04.090. ((~~In the case of a county generated sales study (see WAC 458-53-100), the county may use a representative sample of all such transactions with the prior written approval of the department.~~)) Sales of mobile homes on leased land should be included in the invalid sales report utilizing a code 27 and the comment "MH on leased land".

(2) **Sales excluded.** Sales or transfers of real property involving instruments other than a warranty deed or real estate contract shall not be considered in the sales study. The following types of sales transactions are examples of sales to be excluded from the sales study, regardless of the type of sale instrument used. Differences from the numerical coding designations set forth in this example may be used by individual counties with prior approval from the department.

NUMERICAL CODE	TYPE OF TRANSACTION
1	Family - A sale between relatives.
2	Transfers within a corporation by its affiliates or subsidiaries.
3	Administrator, guardian or executor of an estate.
4	Receiver or trustee in bankruptcy or equity.
5	Sheriff or bailee.
6	Tax deed.
7	Properties exempt from taxation (nonprofit, government, etc.).
8	Individual sales with assessment-to-sales ratios of less than twenty-five percent or greater than one hundred seventy-five percent except as provided in WAC 458-53-070.
9	Quitclaim deed.
10	Gift deed; love and affection deed.
11	Seller's or purchaser's assignment of contract or deed - Transfer of interest.
12	Correction deed.
13	Trade - Exchange of property between same parties.
14	Deeds involving partial interest in property, such as one-third or one-half interest. (If transfer involves total interest i.e., one hundred percent of the property, sale is valid.)

NUMERICAL CODE	TYPE OF TRANSACTION
15	Forced sales - Transfers in lieu of imminent foreclosure, condemnation or liquidation.
16	Easement or right of way.
17	Deed in fulfillment of contract ((~~(on a current transaction, a contract with a fulfillment deed is a valid sale)~~)).
18	Property physically improved after sale.
19	Timber or forest land.
20	Bare lots platted within the ((~~eight-month~~)) twelve-month time period described in WAC 458-53-070(2), with less than twenty percent sold.
21	Plottage - When a larger unit of land is being assembled and an adjoining property is sold at a price significantly different from the price of property of a similar type.
22	$1,000 sale or under.
23	Lease - Assignment, option, leasehold.
24	Classified as "current use" under chapter 84.34 RCW as of date of sale.
25	Change of use where rezoning takes place.
26	Current year segregations that have not been appraised.
27	Other - Necessary to identify reason.

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-100 County generated sales studies. (1) **Sales data provided by county.** ((~~When~~)) Sales data ((~~is~~)) provided to the department by counties in accordance with these rules and subject to audit by the department, ((~~the data~~)) shall be used by the department to determine the indicated real property ratio. The data provided shall be in the form of two reports, a report consisting of data from valid sales, and a report listing those sales deemed to be invalid.

(2) **Report of valid sales.** The county generated sales report consisting of data from valid sales shall include the following information for each valid sale:

(a) The real estate excise tax affidavit number.

(b) The transfer instrument type.

(c) The parcel number(s), or other file identification number(s).

((~~(c)~~)) (d) The date of sale.

((~~(d)~~)) (e) The sale price of the transaction.

((~~(e)~~)) (f) The sale price of the transaction reduced by one percent.

((~~(f)~~)) (g) The land use code for the sale property.

((~~(g)~~)) (h) The current assessed value on the county's assessment roll for the sale property.

((~~(h)~~)) (i) The previous year's assessed value.

(j) A ratio determined by dividing the assessed value by the adjusted sale price (the adjusted sale price is the amount determined in (e) of this subsection).

(3) **Summary of valid sales data.** The county generated sales report shall also contain a summary of the sales information arranged according to land use categories and assessed value strata designated by the department for each county. The summaries for each stratum shall include:

(a) The total number of sales;

(b) The total assessed value of all sale property;

(c) The total adjusted sale price for all sales;

(d) The total average assessed value; and

(e) The total average adjusted sale price.

(4) **Report of invalid sales.** The county generated sales report consisting of data from invalid sales shall include the following information for each invalid sale:

(a) The real estate excise tax affidavit number.

(b) The transfer instrument type.

(c) The parcel number(s), or other file identification number(s).

((~~(c)~~)) (d) The date of sale.

((~~(d)~~)) (e) The sale price of the transaction.

((~~(e)~~)) (f) The sale price of the transaction reduced by one percent.

((~~(f)~~)) (g) The land use code for the sale property.

((~~(g)~~)) (h) The current assessed value on the county's assessment roll for the sale property.

((~~(h)~~)) (i) The previous year's assessed value.

(j) A ratio determined by dividing the assessed value by the adjusted sale price (the adjusted sale price is the amount determined in (e) of this subsection).

((~~(i)~~)) (k) The appropriate numerical code (see WAC 458-53-080) or the matching description of the reason for determining that the sale was invalid. If numerical code number 27 is used, the reason for determining that the sale was invalid shall be described.

(5) **Sales report—When submitted.** The county generated sales report shall be submitted as soon as possible following the close of the assessment rolls on May 31st and, for sales of property involving new construction, as soon as possible following August 31st.

AMENDATORY SECTION (Amending WSR 02-14-031, filed 6/24/02, effective 7/25/02)

WAC 458-53-140 Personal property ratio study. (1) **Introduction.** This rule provides information about the personal property ratio study, including the basis for a county's personal property ratio, the determination of strata for each county, and the effect of the discovery of omitted property on the ratio study.

(2) **Basis for personal property ratio.** The basis for a county's personal property ratio will be valuation data with respect to personal property from the three years preceding the current assessment year.

(3) **Stratification of rolls.** Determination of strata for each county will be made by the department to ensure the selection of a representative audit sample and will be reviewed periodically. After the strata have been determined, the department will notify the counties of the strata limits and

each county must provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample;

(ii) The previous year's assessed value for each sample; ((~~and~~))

(iii) The current year's assessed value for each sample; and

(iv) The actual number of samples;

(b) The total number of personal property accounts in each stratum; and

(c) The total assessed value in each stratum for both the previous and the current years.

(4) **Omitted property.** If the department discovers omitted property in a county, the results of the department's audit will be included in the ratio study.

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-160 Indicated personal property ratio—Computation. (1) **Determination of ratio for assessed value strata.** For each personal property assessed value stratum, excluding properties identified in WAC 458-53-070 (4)(a), an average assessed value, and an average market value shall be determined from the results of selected audit studies. The average assessed value for each stratum divided by the average market value determines the ratio for each assessed value stratum.

(2) **Determination of indicated market value.** The actual total assessed value of the county for each stratum divided by the ratio for each assessed value stratum, as determined by using the calculation set forth in subsection (1) of this section, determines the indicated market value of each stratum for the county.

(3) **Additional categories.** ((~~(a)~~)) The actual county total assessed values of properties identified in WAC 458-53-070 (4)(a) are added as a separate category to the total county assessed value. A ratio determined for these properties is applied against the total assessed value for the category to determine the indicated total market value for the category.

((~~(b) If ten percent or more of the total personal property assessed value of a county consists of publicly owned timber sold by competitive bid to private purchasers, the assessed value of the timber is added as a separate category to the total county assessed value. A ratio determined for this property is applied against the total assessed value for this category to determine the indicated total market value for this category.~~))

(4) **Determination of county indicated ratio.** The sum of the actual total county assessed values is divided by the sum of the indicated market values to determine the county indicated personal property ratio.

(5) **Example.** The following illustration, using simulated values and ratios, indicates the ratio computation procedures for personal property.

STEP 1 - STRATUM AVERAGE VALUE AND RATIO COMPUTATIONS

Stratum	(1) Number of Samples	(2) Average Assessed Value of Samples	(3) Average Market Value of Samples	(4) Stratum Ratio (Col. 2 ÷ Col. 3)
$ 0 - 74,999	25	$ 17,000	$ 22,000	.773
75,000 - 249,999	15	124,000	235,000	.528
Over - 250,000	10	850,000	960,000	.885

STEP 2 - APPLICATION OF STRATUM RATIOS TO ACTUAL COUNTY ASSESSED VALUES

Stratum	(1) Actual County Personal Property Assessed Values	(2) Ratio	(3) County Market Value Related to Actual Assessed Value (Col. 1 ÷ Col. 2)
$ 0 - 74,999	$21,500,000	.773	$ 27,813,713
75,000 - 249,999	23,000,000	.528	43,560,606
Over - 250,000	50,000,000	.885	56,497,175
WAC 458-53-070 (4)(a)			
Properties	0		0
Totals	$94,500,000		÷ $127,871,499 = 73.9
County Indicated			
Personal Property Ratio			73.9%

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-200 Certification of county preliminary and indicated ratios—Review. (1) **Preliminary ratio certified to assessor.** The department shall annually determine the real property and personal property preliminary ratios for each county and shall certify these ratios to the county assessor on or before the first Monday in September.

(2) **Request for review.** Upon request of the assessor, a landowner, or an owner of an intercounty public utility or private car company, the ((~~department~~)) department's property tax assistant director shall review the county's preliminary ratio with the requesting party and may make any changes indicated by such review. This review shall take place between the first and third Mondays of September. If the department does not certify the preliminary ratios as required by subsection (1) of this section, the review period shall extend for two weeks from the date of certification.

(3) **Review exclusions.** For the personal property ratio study, only the current year's audit results shall be subject to review.

(4) **Certification of indicated ratios.** Prior to equalization of assessments pursuant to RCW 84.48.080 and after the third Monday of September, the department shall certify to each county assessor the indicated real and personal property ratios for that county.

AMENDATORY SECTION (Amending WSR 96-05-002, filed 2/8/96, effective 3/10/96)

WAC 458-53-210 Appeals. If an assessor, landowner, or owner of an intercounty utility or private car company has reviewed the ratio study as provided in WAC 458-53-200, that person or company may appeal the department's indicated ratio determination, as certified for that county, to the state board of tax appeals pursuant to RCW 82.03.130(5). The appeal to the state board of tax appeals must be filed ((~~not~~)) no later than fifteen days after the date of mailing of the certification.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 458-53-095	Property values used in the ratio study.
WAC 458-53-105	Review procedures for county studies.
WAC 458-53-135	Indicated real property ratio—Computation.

WSR 16-06-115
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed March 2, 2016, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-175.

Title of Rule and Other Identifying Information: WAC 182-550-3840 Payment adjustment for potentially preventable readmissions.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on April 5, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 6, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on April 5, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by April 1, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the dates it will update the readmission factors used to calculate payment adjustments to hospitals for potentially preventable readmissions. The agency is also adding a definition for "fiscal year."

Reasons Supporting Proposal: This change gives providers a full year of data before the agency implements a change on January 1, 2017.

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: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-2716, (360) 725-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

March 2, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-24-096, filed 12/1/15, effective 1/1/16)

WAC 182-550-3840 Payment adjustment for potentially preventable readmissions. (1) The medicaid agency adjusts the payment rate to a hospital with an excessive number of potentially preventable readmissions (PPRs), using the

criteria described in subsection (4) of this section. The agency calculates the number of excess PPRs using a risk-adjusted comparison, as described in subsection (5) of this section, between the actual and expected number of PPRs attributable to a hospital, and prospectively reduces the payment.

(2) Payment reductions under this section do not apply to critical access hospitals under WAC 182-550-2598; however, critical access hospital claims are included in the PPR analysis.

(3) The following definitions and those found in chapter 182-500 WAC apply to this section:

(a) "Actual PPR chains" means the number of PPR chains attributable to a hospital, based on the PPR analysis.

(b) "Excess PPR chains" means the difference between a hospital's actual PPR chains and the expected PPR chains, not to be less than 0.

(c) "Expected PPR chains" means the number of PPR chains expected for a hospital, based on the hospital's mix of services provided and clients served in the PPR analysis.

(d) "Excess readmission payments" means a hospital's number of excess readmissions multiplied by the average payments per PPR chain.

(e) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(f) "Initial admission" means an admission to a hospital that is not identified as a PPR that is followed by a PPR for the same recipient within thirty days, as determined by the PPR software under standard settings.

((~~f~~)) (g) "Nonqualifying admission" means an admission excluded from the determination of readmissions by the PPR software under standard settings. Nonqualifying admissions exclude initial admissions, only admissions, and PPRs.

((~~g~~)) (h) "Only admission" means an admission that is not a PPR, an initial admission, or other nonqualifying admission, as determined by the PPR software under standard settings.

((~~h~~)) (i) "Potentially preventable readmission (PPR)" means a readmission meeting the criteria in subsection (4) of this section that follows a prior discharge from a hospital within thirty days for the same recipient, as determined by the PPR software under standard settings. A PPR can occur at the same hospital as the initial readmission or at a different hospital.

((~~i~~)) (j) "Potentially preventable readmission chain" or "PPR chain" means the collection of one or more PPRs attributable to an initial admission.

((~~j~~)) (k) "PPR analysis" means the historical claims data processed by the PPR software under standard settings used to determine each hospital's excess PPR chains, as described in subsection (5) of this section.

((~~k~~)) (l) "PPR software" means the software created and maintained by the 3M™ Corporation and currently used by the agency to identify PPRs. This software is programmed to include admission inclusion and exclusion criteria and factors in an adjustment for pediatric admissions and those admissions with a mental health diagnosis code, but are not classified as a mental health admission.

((~~l~~)) (m) "Readmission reduction factor" means a prospective reduction to inpatient payment rates based on the excess readmissions payments divided by the total hospital inpatient payments in the PPR analysis. The agency will consider a cap on this reduction to the inpatient payment rate each year.

(4) Readmission criteria. A PPR is an inpatient readmission within thirty days after discharge that is clinically related to the initial admission, as defined by the PPR software using standard settings. A PPR meets the following criteria:

(a) The readmission is potentially preventable through appropriate care consistent with accepted standards in the prior discharge or during the postdischarge follow-up period;

(b) The readmission is for a condition or procedure related to the care provided during the prior discharge or during the period immediately after the prior discharge;

(c) The PPR chain has one or more readmissions that are clinically related to the initial admission. The first readmission is within thirty days after the initial admission, and the thirty-day time frame begins again at the discharge of the most recent readmission; and

(d) The readmission is to the same or to any other hospital.

(e) For the purposes of determining PPRs, certain services and circumstances are excluded from the analysis including, but not limited to:

(i) Leukemia;

(ii) Lymphoma;

(iii) Chemotherapy;

(iv) Neonatal admission;

(v) Hospitalization with a discharge status of "left against medical advice";

(vi) Admission to an acute care hospital for clients assigned to the base APR DRG for rehabilitation, aftercare, and convalescence;

(vii) Same-day transfer to an acute care hospital for non-acute care (for example: Hospice care);

(viii) Malignancy and selected disorders or diseases with chemotherapy or radiotherapy procedures (for example: Connective tissue or coagulation and platelet disorders); and

(ix) Out-of-state admission.

(5) Methodology to determine excess readmissions.

(a) The agency's analysis is based on the 3M™ Health Information Systems Potentially Preventable Readmissions Classification System under standard settings currently used by the agency.

(b) The following readmissions are excluded from the PPR analysis prior to processing the claims data through the PPR software:

(i) Enrollees in state-only programs;

(ii) Dually eligible medicare/medicaid enrollees;

(iii) Mental health and chemical dependency claims covered by the division of behavioral health and recovery (DBHR); and

(iv) Claims occurring at out-of-state, noncritical border hospitals.

(c) Nonqualifying admissions identified by the PPR software under standard settings are excluded from the determination of excess PPR chains.

(d) The following claims are also excluded from the determination of excess PPR chains:

(i) Trauma claims qualifying for supplemental payments for approved trauma service centers under WAC 182-550-5450;

(ii) Newborn cases with the mother's patient information reported in the claim;

(iii) Newborn jaundice cases; and

(iv) Transplant diagnosis-related group (DRG) initial admissions or admissions within one hundred eighty days of a transplant DRG.

(e) The agency will prospectively apply a readmission reduction factor to inpatient rates for dates of service provided on January 1, 2016, through June 30, 2016, based on a PPR analysis consisting of the following claims data:

(i) PPR analysis will consist of fee-for-service (FFS) and managed care claims data, including claims denied under the legacy readmission policy under WAC 182-550-3000, and excluding the claims described in (b) of this subsection.

(ii) PPR analysis claim services dates will consist of discharge dates within state fiscal year 2014 (July 1, 2013, through June 30, 2014), with the following exceptions:

(A) PPR analysis will include PPRs with a discharge date after state fiscal year 2014 that were in a PPR chain with an initial admission discharge date in state fiscal year 2014.

(B) PPR analysis will exclude PPRs with a discharge date in state fiscal year 2014 that were in a PPR chain with an initial admission discharge date before state fiscal year 2014.

(iii) A readmission reduction factor for each hospital is based on the hospital's excess readmission payments divided by the total hospital inpatient payments in the PPR analysis.

(f) The agency will annually update the readmission reduction factors on ((~~July~~)) January 1st, starting on ((~~July 1, 2016~~)) January 1, 2017, based on a PPR analysis consisting of the following claims data:

(i) PPR analysis will consist of FFS and managed care claims data, including claims denied under the legacy readmission policy under WAC 182-550-3000, and excluding the claims described in (b) of this subsection.

(ii) PPR analysis claim services dates will consist of discharge dates within the ((~~calendar~~)) state fiscal year prior to the ((~~July~~)) January 1st effective date (for readmission reduction factors effective ((~~July 1, 2016~~)) January 1, 2017, the PPR analysis will be based on claims with discharge dates in ((~~calendar year 2015~~)) state fiscal year 2016), with the following exceptions:

(A) PPR analysis will include PPRs with a discharge date after the ((~~calendar~~)) state fiscal year that were in a PPR chain where the initial admission discharge date was in the ((~~calendar~~)) state fiscal year.

(B) PPR analysis will exclude PPRs with a discharge date in the ((~~calendar~~)) state fiscal year that were in a PPR chain where the initial admission discharge date was before the ((~~calendar~~)) state fiscal year.

(iii) A readmission reduction factor for each hospital is based on the hospital's excess readmission payments divided by the total hospital inpatient payments in the PPR analysis.

WSR 16-06-122
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed March 2, 2016, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-131.

Title of Rule and Other Identifying Information: WAC 308-89-060 Fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Conference Room 2105, Olympia, WA 98502, on April 5, 2016, at 10:00 a.m.

Date of Intended Adoption: April 6, 2016.

Submit Written Comments to: Sirena Walters, Transportation Services, P.O. Box 9039, Olympia, WA 98507-9039, e-mail swalters@dol.wa.gov, fax (360) 586-6703, by April 4, 2016.

Assistance for Persons with Disabilities: Contact transportation services, TTY (360) 664-0116, or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Eliminating the processing fee for name and address changes will allow licensees to submit these changes directly to the department, bypassing the department of revenue/business licensing services (BLS) step currently required. This should enable the department to process name and address changes within two to three days after receipt of the request from the licensee.

Reasons Supporting Proposal: The department is interested in adopting rules it knows can improve the efficiency of services to for hire industry licensees. The current process for handling name and address changes can take from two to three weeks for receipt of the fee, update of the record, department processing and issuance of updated vehicle certificates to the business. The word "new" is being removed from the application fee because this is a one-time fee and is not subject to renewal. The word "new" is being removed from the vehicle certificate fee because the original vehicle certificate fee and the renewal vehicle certificate fee are identical.

Statutory Authority for Adoption: RCW 46.72.120 and 46.01.110.

Statute Being Implemented: RCW 46.72.030.

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: Name and address changes by for hire businesses currently require the business to file an application and a $55.00 fee. Collection of licensing fees through BLS is required by statute. Eliminating the fee requirement will allow the department to accept name and address change requests directly from for hire business owners, and allow the department to quickly issue updated vehicle certificates. The department will implement this change in fee policy through its web site. The fiscal impact is minimal, and the change in policy increases the program's capacity to more efficiently serve its customers. Local licensing jurisdictions and law enforcement will also benefit from for hire operators more quickly receiving their updated vehicle certificates. "New" to describe the application and vehicle certificate fees is unnec-

essary, inconsistent and adds no value. Removing "new" has no effect on the fees paid.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Derek Goudriaan, Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-6453; Implementation: Jody Sisk, Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98507, (360) 664-1539; and Enforcement: Same as above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making does not impose any new requirements. This rule change will not increase for hire business operating costs. Those for hire businesses changing their name or address with the department will avoid the current cost of $55.00 associated with the update of their vehicle certificates.

A cost-benefit analysis is not required under RCW 34.05.328. No costs are incurred. This rule change eliminates a fee for for hire name and address changes.

March 2, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-046, filed 11/30/12, effective 1/1/13)

WAC 308-89-060 Fees. The department, as authorized in RCW 46.72, shall charge and collect the following fees:

((~~New~~)) For hire business application	$110.00
((~~New~~)) Vehicle certificate	55.00
Vehicle certificate renewal	55.00
Change of vehicle certificate*	55.00
Duplicate vehicle certificate	55.00

* No vehicle certificate fee will be charged for a name or address change, unless the change involves new ownership of the business or the vehicle.

WSR 16-06-123
PROPOSED RULES
WASHINGTON STATE UNIVERSITY
[Filed March 2, 2016, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-071.

Title of Rule and Other Identifying Information: Chapter 504-33 WAC, Facility use rules for first amendment/free speech activities.

Hearing Location(s): Lighty 405, Washington State University (WSU) Pullman, Pullman, Washington; SAC 503A, WSU Spokane, Spokane, Washington; TWST 209, WSU Tri-Cities, Richland, Washington; and VDEN 236, WSU Vancouver, Vancouver, Washington, on April 5, 2016, at 4:00 p.m.

Date of Intended Adoption: May 6, 2016.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Joy Faerber, (509) 335-2005 by April 1, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSU is amending rules regarding use of university facilities and locations for first amendment/free speech activities. Such amendments are intended to clarify language and to provide additional latitude for managing first amendment/free speech activities at university locations.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Amanda Owen, Contracts Manager, Office of Finance and Administration, French Administration 442, Pullman, WA 99164-1045, (509) 335-7739; Implementation: Olivia Yang, Interim Vice-President for Finance and Administration, French Administration 442, Pullman, WA 99164-1045, (509) 335-5571; and Enforcement: William Gardner, Associate Vice-President, Police WSU Police Department, Safety 60, Pullman, WA 99164-7300, (509) 335-8548.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

March 2, 2016
Deborah L. Bartlett, Director
Procedures, Records, and Forms
University Rules Coordinator

NEW SECTION

WAC 504-33-012 Use of university facilities for first amendment/free speech activities—General policy and purpose. The university believes that freedom of expression is an indispensable quality of university life, and that active participation in political and social expression both enhances the education of the individual and contributes to the betterment of society. The university is committed to respecting and promoting the rights afforded by the first amendment to the Constitution of the United States, including the right to free speech, petition, and assembly.

The university further recognizes that it has an obligation to maintain an atmosphere that allows it to carry out its broad missions of teaching, research, and public service in the course of the normal operations of the university.

To achieve the objectives of chapter 504-33 WAC, it is essential that free expression be accomplished in a manner that allows for the orderly function of normal university operations. Thus, the purpose of the time, place, and manner regulations set forth in chapter 504-33 WAC is to promote opportunities for exercise of the rights protected by the first amendment to the Constitution of the United States on the

university campus and to ensure that these activities do not interfere with the furtherance of the university's mission-related responsibilities for which the university's buildings, facilities, and grounds are dedicated by the state of Washington.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

WAC 504-33-015 Definitions. (1) "Nonuniversity group or individual," for the purposes of this policy, means a collection of individuals that is neither a university affiliate, a registered student organization, nor a recognized employee group. The term also includes the individual members of these groups, when acting on behalf of the group, and individuals who are not currently enrolled students, current university employees, or employees of a university affiliate.

(2) "University group or individual," for purposes of this policy, means registered student organizations as defined in WAC 504-28-010, or a recognized employee group of the university, and also encompasses the individual members of these groups when acting on behalf of the group. The term also includes individuals who are currently enrolled students or current employees.

(3) "University affiliates" or "affiliated entities" means those entities that have formal relationships with the university and also encompass those entities' officers, agents, and employees. The terms include, but are not limited to, the university foundation, the university research foundation, the office of the attorney general, the 4-H foundation, and the United States Department of Agriculture—Agricultural Research Service. ((A list of affiliated entities is available on the campus use committee web site. The web site can be found by accessing the university's web site at: http://www.wsu.edu/.))

(4) "Limited public forum areas" means those areas of each campus ((that the university has chosen to be open)) available as places for expressive activities protected by the first amendment, subject to reasonable time, place ((or)), and manner restrictions.

(((a) At the Pullman)) At each university campus, the ((designated)) limited public forum areas are((:

(i) The Glenn Terrell Mall; and

(ii) The public sidewalks adjacent to public roads.

(b) At the Spokane campus, the designated limited public forum areas are:

(i) The patio outside the main entrance to the Phase I Classroom Building; and

(ii) The public sidewalks adjacent to public roads.

(c) At the Tri-Cities campus, the designated limited public forum areas are:

(i) The Atrium Courtyard; and

(ii) The public sidewalks adjacent to public roads.

(d) At the Vancouver campus, the designated limited public forum areas are:

(i) The area of campus plaza directly east of the cafeteria extending to the stone wall; and

(ii) The public sidewalks adjacent to public roads.

(e) In addition to the public forum areas identified herein, the chancellors of the Spokane, Tri-Cities, and Vancouver campuses and the university president may designate additional areas of the campuses under their authority as public forums. Such additional public forum areas shall be set forth in the university's business policies and procedures manual)) all university facilities, with the exception of the interior or immediate vicinity of university facilities used to support university research, academic instruction, or health services.

(5) "First amendment activities" refers to any activity protected by the first amendment to the Constitution of the United States. Such first amendment activities may include, but are not necessarily limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments ((and/or)), and other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

(6) "University facilities" means all buildings and grounds owned or controlled by the university and the streets, sidewalks, malls, parking lots, and roadways within the boundaries of property owned or controlled by the university.

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

WAC 504-33-025 Procedure for providing notice of use of limited public forum ((facilities)) area for first amendment activities. ((Subject to the regulations and requirements of this policy, university and nonuniversity groups)) (1) Groups and individuals may use the university's limited public forum areas for those activities protected by the first amendment((.

(1) Notice to use the limited public forum areas is to be provided)) to the Constitution of the United States, subject to the requirements set forth in chapter 504-33 WAC.

(2) Notice. The group or individual desiring to use a limited public forum area to engage in first amendment activities is requested to provide notice of the intended use of the desired limited public forum area as follows:

(a) At the Pullman campus((:

(i))), notice to the campus police((; and

(ii) For requests to use the Glenn Terrell Mall, to the scheduling office)).

(b) At the Spokane campus, notice to:

(i) ((To)) The campus office of student affairs; and

(ii) ((To)) The campus security office.

(c) At the Tri-Cities campus, notice to:

(i) ((To)) The campus office of student affairs; and

(ii) ((To)) The campus security office.

(d) At the Vancouver campus, notice to:

(i) ((To)) The campus office of ((business affairs)) finance and operations; and

(ii) ((To)) The campus ((security office)) police.

(((2) Timing of notice. All groups must provide the required notice no later than fourteen calendar days in advance of use of the limited public forum. However, events may be permitted with less notice so long as the event does not interfere with any other function occurring at the facility.))

(3) Content of notice. The notice ((~~to use the~~)) of use of a limited public forum area((~~s~~)) for first amendment activities is to contain:

(a) The contact information for the group or individual that will conduct the event, including group name, contact person name, address, e-mail address, and telephone number ((~~of the individual, group, entity, or organization sponsoring the event or use (hereinafter "the sponsoring organization"); and~~

~~(b) The name, address, and telephone number of a contact person for the sponsoring organization; and~~

~~(c)~~)); and

(b) The date, time, and ((~~requested location of the event; and~~

~~(d)~~)) limited public forum area to be used for the first amendment activities; and

(c) The nature and purpose of the ((~~event~~)) first amendment activities; and

((~~(e)~~)) (d) The estimated number of people expected to ((~~participate in the event~~)) attend the first amendment activities, both as participants and as spectators.

((~~(4) Sound amplification. The use of sound amplification devices for free speech purposes is not allowed.~~

~~(5) Duration of events. In order to allow for the expression of a wide range of viewpoints and discussion of an array of issues, university group events may not last longer than eight hours per day, and may continue no longer than five days from beginning to end. Nonuniversity events and university affiliate events may not last longer than five hours per day and may continue over no more than three days, from beginning to end. These limitations upon the duration of events will be excused, on a day-to-day basis, upon request when there are no competing requests to use the facility.~~

~~(6) Distribution of materials. Signs, posters, literature, handbills, leaflets, and pamphlets may be distributed in accordance with WAC 504-34-140. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information.~~

~~(7) Commercial transactions. Speech that does no more than propose a commercial transaction is prohibited in connection with the use of the facility or event.~~

~~(8) The limited public forum used by the group must be cleaned up and left in its original condition and may be subject to inspection by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of cleanup or for the repair of damaged property.~~

~~(9) The use of the facility must comply with all requirements of WAC 504-35-030.~~

~~(10) The university and/or government authorities may specify additional fire, safety, sanitation, and special regulations for the event, and the user must obey those regulations.~~

~~(11) The university will not provide utility connections or hook-ups.~~))

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

WAC 504-33-030 ((~~Additional requirements for scheduling at times of university authorized or sponsored events.~~)) Limitations on use of limited public forum areas. (1) The use of a limited public forum ((~~may not be used on the same date as any previously scheduled university event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than five hundred people will attend the university event or activity~~)) area must comply with all requirements of WAC 504-35-030.

(2) Duration of events. In order to allow for the expression of a wide range of viewpoints and to allow the utilization of university facilities for a wide range of purposes, the use of a limited public forum area for first amendment activities may not continue for longer than five calendar days from beginning to end.

(3) Distribution of materials. Signs, posters, literature, handbills, leaflets, and pamphlets may be distributed in accordance with WAC 504-34-140.

(4) The university will not provide utility connections or hook-ups.

(5) The group or individual utilizing the limited public forum area must return the limited public forum area to its original condition after the use and is responsible for the costs of cleanup and the costs to repair damages to the limited public forum area and other university property that arise from such use.

(6) The university and/or government authorities may specify reasonable additional fire, safety, sanitation, insurance, and impact-mitigating requirements for the use of the limited public forum area, and the group or individual utilizing the limited public forum area must meet those requirements.

(7) Where more than five hundred people are expected to attend an event in Martin Stadium or Beasley Coliseum, or on the days of any football or basketball game, the following restrictions apply to uses of limited public forum areas for first amendment activities:

(a) The sidewalks and other outdoor areas and streets adjacent to Martin Stadium may not be used for first amendment activities during the ((~~three-hour~~)) period ((~~preceding~~)) beginning three hours prior to a football game or other event at Martin Stadium ((~~until~~)) and ending two hours after the game or event has ended, except that sidewalks opposite ((~~the~~)) Martin Stadium may continue to be used for first amendment activities during these time periods, so long as the first amendment activities do not unduly interfere with the flow of pedestrian or vehicular traffic. Where the ((~~free speech activity is~~)) first amendment activities are expected to ((~~draw a crowd of~~)) include more than fifty total people as participants and spectators, the Glenn Terrell Mall may not be used for first amendment activities during these time periods.

(b) The sidewalks and other outdoor areas and streets adjacent to Beasley Coliseum may not be used for first amendment activities during the ((~~two-hour~~)) period ((~~preceding~~)) beginning two hours prior to the start of a game or other event at Beasley Coliseum ((~~until~~)) and ending two hours after the game or event has ended, except that sidewalks opposite ((~~the~~)) Beasley Coliseum may continue to be used for first amendment activities during these time periods, so long as the activities do not unduly interfere with the flow of pedestrian or vehicular traffic.

NEW SECTION

WAC 504-33-035 Additional limitations on use of limited public forum areas by nonuniversity groups and individuals. Nonuniversity groups and individuals may use the university's limited public forum areas for those activities protected by the first amendment to the Constitution of the United States, subject to the requirements set forth in chapter 504-33 WAC, with the exception of the interior or immediate vicinity of any university facility used to support university research, academic instruction, or health services, unless:

(1) Use of the interior or immediate vicinity of the university facility is authorized by the university president or his or her designee (as to the Pullman campus), or the applicable chancellor of the Spokane, Tri-Cities, or Vancouver campuses or his or her designee (as to such campuses); and

(2) Notice is provided five business days prior to the intended use of the desired limited public forum area, in accordance with WAC 504-33-025 (2) and (3).

AMENDATORY SECTION (Amending WSR 08-24-026, filed 11/24/08, effective 12/25/08)

WAC 504-33-040 ((~~Grant and~~)) Policy exceptions; termination, limitation of license to use facilities. (1) Exceptions to policy.

(a) The university president or his or her designee((~~; any university vice-president; the chancellors~~)) (as to the Pullman campus), or each chancellor of the Spokane, Tri-Cities, or Vancouver campuses or his or her designee((~~s; or the designee of the vice-president for business and finance may authorize first amendment activities which are reasonably determined not to disrupt university activities, despite a literal violation of this policy statement. Such determinations will be made without consideration of the content or message of the first amendment activities.~~)) (as to such campuses) may, but are not required to, make reasonable exceptions to the policy set forth in chapter 504-33 WAC, provided he or she determines, after reasonable inquiry, that:

(i) The use of the limited public forum area that is the subject of the exception request will not interfere with any other function occurring at the limited public forum area or result in an unreasonable disruption of normal university functions or operations; and

(ii) Adequate impact-mitigating measures related to safety or university operations can be implemented prior to the start of the use of the limited public forum area.

(b) In order to allow for adequate time for review of the request, the group or individual seeking an exception under this subsection is requested to seek such exception at least five business days' prior to the intended use of the desired limited public forum area.

(2) Termination, limitation of license. The university president or his or her designee((~~; any university vice-president; the chancellors~~)) (as to the Pullman campus), or each chancellor of the Spokane, Tri-Cities, or Vancouver campuses or ((~~designees; or the designee of the vice-president for business and finance may, at any time,~~)) his or her designee (as to such campuses), may limit, terminate, cancel, relocate, or prohibit the use of ((~~facilities if the event is disrupting normal university functions. Any of these individuals may refuse to allow a proposed use of facilities if they~~)) a limited public forum area for first amendment activities, if he or she determines, after reasonable inquiry, that ((~~the use or event cannot be conducted without disrupting normal~~)) such action is reasonably necessary to prevent or stop:

(a) Substantial harm or threat of substantial harm to the safety of persons; or

(b) Substantial damage to property; or

(c) Substantial disruption of university functions or operations. ((~~Such~~))

(3) Any determinations ((~~will~~)) made under subsections (1) or (2) of this section are to be made without consideration of the content or message of the ((~~first amendment~~)) expressive activities.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 504-33-020	Use of limited public forum areas—Purpose.
WAC 504-33-050	Posting of a bond and hold harmless statement.

WSR 16-06-126
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 2, 2016, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-23-112.

Title of Rule and Other Identifying Information: Amending WAC 392-140-915 High poverty funding—Process and definition of eligible schools, 392-140-923 K-3 class size—Enrollment and 392-140-932 K-3 class size—Teachers; and new sections WAC 392-140-916 K-3 class size funding, 392-140-934 K-3 class size—Supplemental FTE teachers, 392-140-937 K-3 demonstrated class size—High poverty schools, 392-140-939 K-3 demonstrated class size—Nonhigh poverty schools, 392-140-942 Weighted average class size—High poverty schools, and 392-140-945 Weighted average class size—Nonhigh poverty schools.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington, Olympia, WA 98504-7200, on April 5, 2016, at 8:30 a.m.

Date of Intended Adoption: April 8, 2016.

Submit Written Comments to: T. J. Kelly, Director, OSPI, School Apportionment and Financial Services, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Thomas.kelly @k12.wa.us, fax (360) 664-3683, by April 5, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by March 29, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2015-2017 Biennial Appropriations Act made the allocation to school districts intended to provide K-3 teachers in both poverty and nonhigh poverty schools contingent on class size compliance. These rules define how the class size compliance calculations will work.

Reasons Supporting Proposal: The proposed amendments are required to ensure that districts receive an allocation for K-3 teachers in accordance with state law as prescribed in RCW 28A.150.260.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.150.260.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, Olympia, Washington, (360) 725-6301; and Enforcement: JoLynn Berge, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 2, 2016
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-915 High poverty funding—Process and definition of eligible schools. For the purposes of this section, an eligible school is a school administered by a public school district board or a public charter school board in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building. Schools administered by school districts that are part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding are not eligible schools under this section. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature, subject to funding provided in the Omnibus Appropriations Act.

CEDARS data as of October of the previous school year will be used to determine school eligibility. A CEDARS extract of October 1st data will be pulled on March 31st to be used as the basis for K-3 high poverty funding eligibility for the subsequent school year. The list of eligible schools will be published by mid April. No changes to CEDARS data made after March 31st will be considered, and appeals will not be allowed.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's or charter school's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August. Districts and charter schools must meet the legislative compliance requirements of the K-1 high poverty funding in order to retain the full allotment.

NEW SECTION

WAC 392-140-916 K-3 class size funding. Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 at nonhigh poverty and high poverty schools will be based upon budgeted K-3 enrollment at both nonhigh poverty and high poverty schools as stated in the district's F-203 revenue estimate from September through December for the year budgeted. Districts will also input their estimated K-3 and K-3 high poverty weighted average class size for purposes of funding from September through December. K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs. Funding based on actual average annual FTE enrollment reported in the P-223 will begin in January and will continue through August. Districts must meet the legislative compliance requirements of both K-3 and K-3 high poverty class size funding in order to generate the full allotment.

AMENDATORY SECTION (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

WAC 392-140-923 ((~~K-1 high poverty~~)) K-3 class size—Enrollment. ((~~School level enrollment by grade at each of the high poverty eligible schools will be considered from the current school year October 1 CEDARS data inclusive of changes through the enrollment count day in January, March, and June.~~)) Grade level K-3 high poverty and nonhigh poverty enrollment from a district's P-223 reporting will be considered in the compliance calculations for the months of January, March, and June. All students in ALE programs will be excluded from the compliance calculation. ((~~First grade and full day kindergarten students will be considered a 1.0 FTE, while half day kindergartners will be considered a 0.5 FTE.~~))

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-932 ((~~K-1 high poverty~~)) K-3 class size—Teachers. The superintendent of public instruction shall include in the calculation of high poverty class size compliance those teachers reported on the S-275 at the eligible schools that are coded in programs 01 ((~~and 79~~)) to grade group K ((~~or~~)), 1, 2, or 3, and are reported in one of the following duty roots:

- Duty Root 31 - Elementary homeroom teacher;
- Duty Root 33 - Other teacher;
- Duty Root 34 - Elementary specialist teacher;
- Duty Root 52 - Substitute teacher;
- Duty Root 63 - Contractor teacher.

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K ((~~or 1 at the eligible schools~~)), 1, 2, or 3 multiplied by the annual percentage of students in special education instruction used in determination of a district's or charter school's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

NEW SECTION

WAC 392-140-934 K-3 class size—Supplemental FTE teachers. As used in this chapter, "supplemental full-time equivalent teachers" means the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275. Teachers, for the purpose of this section, are defined in WAC 392-140-932. Supplemental full-time equivalent teachers are determined as follows:

(1) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the school district's most current report S-275.

(2) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

Supplemental teacher FTE must be reported to the office of superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, and 3, as well as separately for nonhigh poverty and high poverty schools.

NEW SECTION

WAC 392-140-936 K-3 demonstrated class size—High poverty schools. Demonstrated class size across all high poverty eligible schools will be calculated by dividing the total teachers and supplemental teacher FTE for the individual grade levels of K, 1, 2, or 3, as described in WAC 392-140-932 into the calculated combined total enrollment across all high poverty schools in the individual grade levels of K, 1, 2, or 3.

NEW SECTION

WAC 392-140-939 K-3 demonstrated class size—Nonhigh poverty schools. Demonstrated class size across all nonhigh poverty eligible schools will be calculated by dividing the total teachers and supplemental teacher FTE for the individual grade levels of K, 1, 2, or 3, as described in WAC 392-140-932 into the calculated combined total enrollment across all nonhigh poverty schools in the individual grade levels of K, 1, 2, or 3.

NEW SECTION

WAC 392-140-942 Weighted average class size—High poverty schools. A K-3 high poverty weighted average class size will be calculated by first multiplying the high poverty enrollment in each of the grades K, 1, 2, or 3 by the demonstrated class size for each respective grade as defined in WAC 392-140-937. The result of those four separate calculations by grade will be summed, and the total will be divided by total K-3 high poverty enrollment as described in WAC 392-140-923, which will result in K-3 high poverty weighted average class size.

A K-3 high poverty max funded class size enhancement will be calculated first by taking the high poverty enrollment in each of grades K, 1, 2, or 3 by the class sizes provided in the Omnibus Appropriations Act. The result of those four separate calculations by grade will be summed, and that total will be divided by the total K-3 high poverty enrollment as described in WAC 392-140-923, which will result in the K-3 high poverty max funded class size enhancement for a specific district.

Districts will generate apportionment funding based on the greater of the K-3 high poverty weighted average class size or the K-3 high poverty max funded class size enhancement. For the months of September through December, districts will generate K-3 high poverty apportionment funding based on the class size input into their F-203 revenue estimate. Beginning in January the results of the most recent compliance calculation will be utilized for apportionment purposes through the end of the school year.

NEW SECTION

WAC 392-140-945 Weighted average class size—Nonhigh poverty schools. A K-3 nonhigh poverty weighted average class size will be calculated by first multiplying the nonhigh poverty enrollment in each of the grades K, 1, 2, or 3 by the demonstrated class size for each respective grade as defined in WAC 392-140-937. The result of those four separate calculations by grade will be summed, and the total will be divided by total K-3 nonhigh poverty enrollment as described in WAC 392-140-923, which will result in K-3 nonhigh poverty weighted average class size.

A K-3 nonhigh poverty max funded class size enhancement will be calculated first by taking the nonhigh poverty enrollment in each of grades K, 1, 2, or 3 by the class sizes provided in the Omnibus Appropriations Act. The result of those four separate calculations by grade will be summed, and that total will be divided by the total K-3 nonhigh poverty enrollment as described in WAC 392-140-923, which will result in the K-3 nonhigh poverty max funded class size enhancement for a specific district.

Districts will generate apportionment funding based on the greater of the K-3 nonhigh poverty weighted average class size or the K-3 nonhigh poverty max funded class size enhancement. For the months of September through December, districts will generate K-3 nonhigh poverty apportionment funding based on the class size input into their F-203 revenue estimate. Beginning in January the results of the most recent compliance calculation will be utilized for apportionment purposes through the end of the school year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-140-921	K-1 high poverty class size compliance.
WAC 392-140-933	K-1 demonstrated class size.

WSR 16-06-127
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed March 2, 2016, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-193 on December 23, 2015.

Title of Rule and Other Identifying Information: The department is considering the removal of the brown pelican from the state's endangered species list (WAC 232-12-014). Delisting criteria are described in WAC 232-12-297 (4.1) and (4.2). The agency is initiating the delisting process in accordance with WAC 232-12-297(6.1.1).

Hearing Location(s): Natural Resource[s] Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on April 8-9, 2016, at 8:00 a.m.

Date of Intended Adoption: On or after April 8, 2016.

Submit Written Comments to: Online http://wdfw.wa.gov/about/regulations/development.html, Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by March 23, 2016.

Assistance for Persons with Disabilities: Contact Tami Lininger by March 25, 2016, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will remove the brown pelican from the list of wildlife species classified as endangered in Washington (WAC 232-12-014). However, as a nongame bird, the brown pelican shall remain a protected species under WAC 232-12-011. This species will also continue to be protected under the federal Migratory Bird Treaty Act.

Reasons Supporting Proposal: The department has reviewed all relevant data pertaining to the population status of brown pelicans in Washington. This data shows that the number of brown pelicans occurring in Washington has increased markedly since the 1980s, likely as a result of increasing abundances of forage fish due to changes in ocean conditions, and perhaps the recovery of the Southern California Bight population. Natural fluctuations in ocean conditions and forage fish abundance have caused changes in pelican numbers in Washington in the past, and will again in the future. While threats such as forage fish declines, ocean warming, toxic algae blooms, and climate change present some uncertainty about the future trend in California brown pelican populations, at this time robust numbers (>10,000) still occur seasonally in our state and they are not immediately threatened.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The public may also submit comments on the proposed rule changes online at http://wdfw.wa.gov/about/regulations/development.html.

Dates related to these proposed rules:

March 23, 2016: Deadline for the public to submit written comments on the rules.

April 8-9, 2016: The department will ask the fish and wildlife commission to adopt the rule changes at the April commission meeting.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2515; and Enforcement: Steven Crown, Natural Resources Building, Olympia, (360) 902-2936.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

March 2, 2016
Jacalyn M. Hursey
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-022, filed 4/27/15, effective 5/28/15)

WAC 232-12-014 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
pygmy rabbit	*Brachylagus idahoensis*
fisher	*Martes pennanti*
gray wolf	*Canis lupus*
grizzly bear	*Ursus arctos*
sea otter	*Enhydra lutris*
killer whale	*Orcinus orca*
sei whale	*Balaenoptera borealis*
fin whale	*Balaenoptera physalus*
blue whale	*Balaenoptera musculus*
humpback whale	*Megaptera novaeangliae*
black right whale	*Balaena glacialis*
sperm whale	*Physeter macrocephalus*

Common Name	Scientific Name
Columbian white-tailed deer	*Odocoileus virginianus leucurus*
woodland caribou	*Rangifer tarandus caribou*
American white pelican	*Pelecanus erythrorhynchos*
((~~brown pelican~~	~~*Pelecanus occidentalis*~~))
sandhill crane	*Grus canadensis*
snowy plover	*charadrius alexandrinus*
upland sandpiper	*Bartramia longicauda*
spotted owl	*Strix occidentalis*
western pond turtle	*Clemmys marmorata*
leatherback sea turtle	*Dermochelys coriacea*
mardon skipper	*Polites mardon*
Oregon silverspot butterfly	*Speyeria zerene hippolyta*
Oregon spotted frog	*Rana pretiosa*
northern leopard frog	*Rana pipiens*
Taylor's checkerspot	*Euphydryas editha taylori*
Streaked horned lark	*Eremophila alpestris strigata*
Tufted puffin	*Fratercula cirrhata*

WSR 16-06-129
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed March 2, 2016, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-079.

Title of Rule and Other Identifying Information: WAC 392-122-420 Full-day kindergarten program—Authority, 392-122-423 Full-day kindergarten program—Determination of eligibility, 392-122-424 Full-day kindergarten program—Letter of acceptance and approvals, and 392-122-425 Full-day kindergarten program—Subsequent determination of eligible schools.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington, Olympia, WA 98504-7200, on April 13, 2016, at 1:00 p.m.

Date of Intended Adoption: April 18, 2016.

Submit Written Comments to: T. J. Kelly, Director, OSPI, School Apportionment and Financial Services, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Thomas.kelly @k12.wa.us, fax (360) 664-3683, by April 13, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 5, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending these rules will allow schools to offer state-funded full-day kindergarten to only a portion of kindergartners enrolled at a school due to lack of classroom space.

Reasons Supporting Proposal: Without these rules being amended, there would be students who would not receive state-funded full-day kindergarten services because the school at which they attend did not have enough space to provide the same program to all kindergarteners enrolled.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.150.315.

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

Name of Agency Personnel Responsible for Drafting and Implementation: T. J. Kelly, Olympia, Washington, (360) 725-6301; and Enforcement: JoLynn Berge, Olympia, Washington, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 2, 2016
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-420 Full-day kindergarten program —Authority. The authority for WAC 392-122-420 through 392-122-426 is:

(1) RCW 28A.150.290(1); and

(2) RCW 28A.150.315((~~; and~~
~~(3) RCW 28A.150.370~~)).

AMENDATORY SECTION (Amending WSR 13-12-008, filed 5/23/13, effective 6/23/13)

WAC 392-122-423 Full-day kindergarten program —Determination of eligibility. Except as provided in subsection (3) of this section, determination for eligibility for full-day kindergarten (FDK) programs is based on an individual school's poverty percentage from the prior school year.

(1) Two weeks after the legislature adopts the state Operating Appropriations Act for the subsequent school year, the superintendent of public instruction shall develop and publish an eligibility list for FDK for the subsequent school year, pursuant to the legislative limitation parameters in the annual budget bill. Should the governor veto all or a portion of the funding for FDK, the superintendent of public instruction shall modify the eligibility list as needed.

(2) A school's poverty percentage is determined by the school's free and reduced priced lunch percentage eligibility for students in kindergarten through sixth grade from the prior school year's October 1st CEDARS report as of March 31st.

(3) Beginning in the 2016-17 school year, all schools that include kindergarten students will be eligible to receive state funds for full-day kindergarten.

(4) Funding amounts per school shall be calculated in accordance with the state Operating Appropriations Act and WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-424 Full-day kindergarten program —Letter of acceptance and approvals. (1) School districts with eligible schools or charter schools that intend to provide a FDK program shall submit a letter of acceptance to the superintendent of public instruction in accordance with a timeline established by the superintendent of public instruction. This letter of acceptance must include the following:

(a) Assurances that the school shall comply with all program requirements outlined in RCW 28A.150.315(1);

(b) ((~~Assurances that the district or charter school can provide the full-day kindergarten program for all children of parents who request it in each eligible school; and~~

~~(c)~~)) Any other requirements as established by the office of superintendent of public instruction; and

(c) In the 2016-17 school year, full-day kindergarten funding is available for schools in which, due to the lack of space/capacity, not all students are able to be served with a full-day kindergarten program. When selecting students for these full-day classrooms, school districts must prioritize students from low income families and consider other students who likely receive the greatest benefits from full-day kindergarten.

(2) The superintendent shall approve the letters of acceptance that have met the requirements in subsection (1) of this section. If, after approving all of the letters of acceptance that were received that met the requirements in subsection (1) of this section, the superintendent determines that additional funding will be available, the superintendent shall notify charter schools and school districts with schools that have the next highest levels of free and reduced price lunch eligibility that they are eligible.

(3) The eligibility for FDK is determined based upon an individual building's student poverty and may not transfer to other buildings or students within a school district.

AMENDATORY SECTION (Amending WSR 09-11-018, filed 5/8/09, effective 6/8/09)

WAC 392-122-425 Full-day kindergarten program —Subsequent determination of eligible schools. Prior to the 2016-17 school year, after consideration of the funding requirement of all submitted applications, the school projected FTE and subject to the amount of remaining funding available, the office of superintendent of public instruction may publish a subsequent list of additional eligible schools that may apply for the FDK program. Eligibility on this list shall be ranked in order of decreasing poverty percentage, in the manner outlined in WAC 392-122-423.

Upon program approval for the full-day kindergarten program, a school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for FRPL as long as all other program requirements are fulfilled.