



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Agriculture

Permanent Rule Only

Effective date of rule:

Permanent Rules

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: : This rulemaking order amends chapter 16-662 WAC – Weights and Measures—National Handbooks and Retail Sale of Motor Fuel by adopting:

- (1) the 2016 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices);
- (2) the 2016 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality) with modifications; and
- (3) The 2016 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods).

The department is also establishing in rule a civil penalty matrix for violations of the Motor Fuel Quality Act (chapter 19.112 RCW) and chapter 19.94 RCW.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 16-662-100, 105, and 115

Suspended:

Statutory authority for adoption: RCW 19.94.190, 19.94.195, 19.112.020, and 19.112.140

Other authority : Chapter 34.05 RCW

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-16-103 on August 2, 2016 (date).

Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted: September 21, 2016

NAME (TYPE OR PRINT)

Derek I. Sandison

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 21, 2016

TIME: 8:11 AM

WSR 16-19-093

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	<u>0</u>	Repealed	_____
Recently enacted state statutes:	New	_____	Amended		Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>4</u>	Amended	<u>3</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended		Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended		Repealed	_____

Chapter 16-662 WAC
WEIGHTS AND MEASURES—NATIONAL HANDBOOKS ((~~AND RETAIL~~)), SALE OF MOTOR FUEL, AND PENALTIES FOR VIOLATIONS

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

WAC 16-662-100 Purpose. (1) This chapter establishes, under the authority of the Washington state department of agriculture (WSDA), requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures (NCWM) and published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel, and establishes a matrix for determining civil penalties under RCW 19.112.060 (1)(b) for motor fuel quality violations.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in *NIST Handbook 44*;

(b) Uniform regulation for weighing and measuring devices under the national type evaluation program (NTEP) addressed in *NIST Handbook 130*;

(c) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(d) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(e) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(f) Uniform examination procedure for price verification addressed in *NIST Handbook 130*;

(g) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*;

(h) Specifications and tolerances for reference standards and field standard weights and measures addressed in the *NIST Handbook 105* series; (~~and~~)

(i) Requirements for the retail sale and advertising of motor fuel; and

(j) Civil penalties for motor fuel quality violations as provided for under RCW 19.112.060 (1)(b).

(3)(a) *NIST Handbook 44*, *NIST Handbook 130*, *NIST Handbook 133*, and *NIST Handbooks 105* are available on the NIST web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm> or may be purchased on the NCWM web site at <http://www.ncwm.net/publications> or by mail from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Copies of the NIST handbooks and ASTM standards are available for viewing at the Washington State Department of Agriculture, 2nd Floor, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-2560.

(b) You may search the NTEP data base for certificates of conformance (CC) on the NCWM web site at http://www.ncwm.net/ntep/cert_search.

(c) For information regarding the contents and application of these publications and data base, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail wts&measures@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA). Except as otherwise modified in this chapter, WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2014)) <u>2016</u> Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	((2014)) <u>2016</u> Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, national type evaluation, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2014)) <u>2016</u> Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.

National standard for:	Contained in the:
(d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2014)) 2016 Edition.</i>
(e) Weights and measures requirements for national type evaluation	<i>Uniform Regulation for National Type Evaluation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130, ((2014)) 2016 Edition.</i>
(4) Specifications and tolerances for reference standards and field standard weights and measures	<i>NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990;</i>
	<i>NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;</i>
	<i>NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;</i>
	<i>NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;</i>
	<i>NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;</i>
	<i>NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;</i>
	<i>NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;</i>
	<i>NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.</i>

WAC 16-662-115 Modifications to NIST Handbook 130. (1) WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
Section 2.20.1. Method of Retail Sale	<p>Modify the existing text in section 2.20.1 with the following: "Type of Oxygenate must be Disclosed.</p> <p>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol.</p> <p>(b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel.</p> <p>(c) Gasoline-ethanol blend fuels containing not more than ten percent(,) ethanol by volume, must be labeled "Contains up to 10% Ethanol."</p> <p>(d) (Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "Ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</p>

Modified Section:	Modification:
	<p>(e)) This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
<p>((Section 2.20.2. Documentation for Dispenser Labeling Purposes</p>	<p>Replace the existing text in section 2.20.2. Documentation for Dispenser Labeling Purposes, with: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.")</p>
<p>Section ((2.23)) 2.23.2. Animal Bedding</p>	<p>Modify the existing text to add: "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."</p>
<p>Section 2.30.2. Labeling Requirements</p>	<p>Modify the existing text to add: <u>Ethanol flex fuel identification and labeling must be done in accordance with 16 C.F.R. Part 306.</u></p>

Modified Section:	Modification:
Section 2.31.2. Labeling of Retail Dispensers	<p>Modify the existing text to add the following: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel.</p> <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."</p> <p>(b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p> <p>Modify the existing text to add the following: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel.</p> <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).</p> <p>(b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
Section 2.31.4. Exemption	Modify the existing text to delete section 2.31.4.
Section 2.34. Retail Sales of Electricity Sold as a Vehicle Fuel	Modify the existing text to delete section 2.34.

(2) WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
Section 2.1.2. Gasoline-Ethanol Blends	Replace the existing text in section 2.1.2 with the following: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either:

Modified Section:	Modification:
	<p>(a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:</p> <ul style="list-style-type: none"> (1) Class 1 shall be 60°C (140°F) (2) Class 2 shall be 56°C (133°F) (3) Class 3 shall be 51°C (124°F) (4) Class 4 shall be 47°C (116°F) (5) Class 5 shall be 41°C (105°F) <p>or</p> <p>(b) The blend shall meet the requirements of ASTM D4814."</p> <p>Modify the existing text to add the following: "2.1.2.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</p> <ul style="list-style-type: none"> (a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15. (b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."
<p>Section 3.2.6. Method of Retail Sale</p>	<p>Modify the existing text in section 3.2.6 with the following: "Type of Oxygenate must be Disclosed.</p> <p>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol.</p>

Modified Section:	Modification:
	<p>(b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel.</p> <p>(c) Gasoline-ethanol blend fuels containing not more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol."</p> <p>(d) ((Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</p> <p>(e)) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>

Modified Section:	Modification:
<p>((Section 3.2.7. Documentation for Dispenser Labeling Purposes</p>	<p>Modify the existing text in section 3.2.7 with the following: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.")</p>
<p><u>Section 3.8.2. Labeling Requirements</u></p>	<p><u>Modify the existing text to add: Ethanol flex fuel identification and labeling shall be in accordance with 16 C.F.R. Part 306.</u></p>
<p>Section 3.9.2. Retail Dispenser Labeling</p>	<p>Modify the existing text in section 3.9.2 to add: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "Methanol." (Example: M85 Methanol.) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
<p>Section 3.15.2. Labeling of Retail Dispensers</p>	<p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel.""</p>

Modified Section:	Modification:
	<p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "<u>B</u>biodiesel" or "<u>B</u>biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."</p> <p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.7. Placement of label. Labels shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
Section 3.15.4. Exemption	Delete section 3.15.4.

(3) WSDA adopts the following modifications to the listed sections of the Uniform Regulation for National Type Evaluation requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(e):

Modified Section:	Modification:
Section 2.3. Director	Modify the existing text in section 2.3 with the following: "Director – Means the director of the Washington state department of agriculture."
Section 4. Prohibited Acts and Exemptions	Modify the existing text in ((section) <u>subsection</u> (c) with the following: "A device in service in this state prior to July 5, 1997, that meets the specifications, tolerances, and other technical requirements of the <i>National Institute of Standards and Technology Handbook 44</i> shall not be required to be traceable to an active CC."

Modified Section:	Modification:
	<p>Modify the existing text in ((section)) <u>subsection (d)</u> with the following: "A device in service in this state prior to July 5, 1997, removed from service by the owner or on which the department has issued a removal order after July 5, 1997, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 effective on the date of the return to service. Such a device shall not be required to be traceable to an active CC."</p> <p>((Modify the existing text in section (e) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."))</p> <p>Modify the existing text in ((section)) <u>subsection (e)</u> with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."</p> <p>Modify the existing text in ((section)) <u>subsection (f)</u> with the following: "A device in service in this state prior to July 5, 1997, that is still in use may be installed at another location in this state provided the device meets requirements in effect as of the date of installation in the new location; however, the device shall not be required to be traceable to an active CC."</p> <p>Modify the existing text in ((section)) <u>subsection (g)</u> with the following: "A device in service in ((this)) <u>another</u> state prior to July 5, 1997, may be installed in this state; however, the device shall meet the specifications, tolerances, and other technical requirements for weighing and measuring devices in the National Institute of Standards and Technology Handbook 44 and be traceable to an active CC."</p>

Modified Section:	Modification:
Section 5. Participating Laboratory and Agreements	Modify the existing text to delete section 5.
Section 6. Revocation of Conflicting Regulations	Modify the existing text to delete section 6.
Section 7. Effective Date	Modify the existing text to delete section 7.

NEW SECTION

**WAC 16-662-160 Definitions for civil penalties and enforcement—
Motor fuel quality.** The following definitions apply to WAC 16-662-165 and 16-662-170:

"Violation" means commission of an act or acts prohibited by chapter 19.112 RCW, Motor Fuel Quality Act, and this chapter or the failure to act in compliance with the requirements of chapter 19.112 RCW and this chapter. Violations include the following: Marketing motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity and quality of a motor fuel; hindering or obstructing the director or the director's authorized agent in the performance of their duties; marketing a motor fuel that is contrary to the provisions of chapter 19.112 RCW and the regulations adopted under the authority of the Motor Fuel Quality Act.

"First violation" means an act or omission unlawful under RCW 19.112.50 that has resulted in a notice of violation or a notice of correction.

"Second violation" means one same or similar violation as a first violation that occurs within two years of the first violation.

"Third violation" means one same or similar violation as a second violation that occurs within two years of the second violation.

"Fourth violation" means one same or similar violation as a third violation that occurs within two years of the third violation.

"Subsequent violation" means one same or similar violation as a fourth violation that occurs within two years of the fourth or any subsequent violation.

"Similar violation" means a violation of a comparable but not identical standard or requirement. For example: A violation of an ASTM fuel standard would be a violation similar to a violation of a different ASTM fuel standard. A violation of an ASTM fuel standard would not be similar to a violation of fuel pricing violation. When determining the level of violation, prior incidents will be based on the date that a final order or stipulated order resolved the prior violation and not from the date that the incident occurred.

"Notice of correction" means a document issued by the department in accordance with RCW 43.05.100. A notice of correction will identify any condition that is a violation. Any violation identified in a notice of correction is a violation even though that violation is not subject to a civil penalty when the notice of correction is issued.

"Notice of intent" means a document issued by the department in accordance with RCW 43.05.110. A notice of intent assesses a civil

penalty under RCW 19.112.060 (1)(b) for violations of chapter 19.112 RCW as provided under WAC 16-662-165 and 16-662-170.

NEW SECTION

WAC 16-662-165 Civil penalties and enforcement—Motor fuel quality. (1) Enforcement actions and civil penalties will be assessed as described below. The department considers each violation to be a separate and distinct occurrence.

(a) Penalties for ASTM specifications violations include a gasoline or diesel sample not meeting one or more ASTM quality specifications as indicated by the department's contract laboratory certificate of analysis. The applicable standards include: D4814 gasoline and gasoline - oxygenate blends, ASTM D7467 biodiesel blends greater than five percent and equal to or less than twenty percent, ASTM 6751 B100 and D975 diesel and biodiesel blends equal to or less than five percent, gasoline - ethanol blends exceeding legal limits, ASTM D5798 ethanol flex fuel, also referred to as E85 fuel ethanol or E85 motor fuel.

	Gasoline	Diesel	Biodiesel and biodiesel blends	Other fuels
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
3rd Violation	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
4th and subsequent violations	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

(b) Penalties for biodiesel and biodiesel blend ratio violations, including biodiesel and biodiesel blends above or below what is labeled on the dispenser.

	Blends between 0 and 5 percent	Blends between 6 and 20 percent	Blends between 21 and 99 percent	100% Biodiesel
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,200.00	\$1,400.00	\$1,400.00	\$1,400.00
3rd Violation	\$1,700.00	\$1,900.00	\$1,900.00	\$1,900.00
4th and subsequent violations	\$2,700.00	\$2,900.00	\$2,900.00	\$2,900.00

(c) Penalties for water in retail fuel storage tanks violations, including failed field tests to determine water in fuel storage tanks exceeding NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsections 4.1 and 4.2.

	Water phase exceeding 1 inch in storage tanks used for gasoline or diesel Water phase exceeding 1/4 inch in storage tanks used for biodiesel blends up to 20%	Water phase exceeding 1/4 inch in storage tanks used for gasoline ethanol blends or biodiesel blends above 20%	Any fuel storage tank with a water phase exceeding 6 inches
1st Violation	NOC	Stop-Sale and \$200.00	Stop-Sale and \$1,500.00
2nd Violation	\$1,000.00	Stop-Sale and \$1,000.00	Stop-Sale and \$3,000.00

	Water phase exceeding 1 inch in storage tanks used for gasoline or diesel Water phase exceeding 1/4 inch in storage tanks used for biodiesel blends up to 20%	Water phase exceeding 1/4 inch in storage tanks used for gasoline ethanol blends or biodiesel blends above 20%	Any fuel storage tank with a water phase exceeding 6 inches
3rd Violation	\$2,500.00	Stop-Sale and \$2,500.00	Stop-Sale and \$6,000.00
4th and subsequent violation	\$5,000.00	Stop-Sale and \$5,000.00	Stop-Sale and \$10,000.00

(d) Penalties for fuel dispenser labeling and retail storage tank fill connection marking violations, including biodiesel, ethanol blended and other fuels offered for sale without dispenser labeling required by WAC 16-662-105 and NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Section 3 Classification and Method of Sale of Petroleum Products as modified by WAC 16-662-115; and retail storage tanks missing fill connection markings as required by NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsection 4.4 Product Storage Identification.

	Biodiesel blends	Gasoline and gasoline-ethanol blends up to 10 percent	Ethanol flex fuel	Other fuels
1st Violation	Notice of Correction			
2nd Violation	\$200.00			
3rd Violation	\$500.00			
4th and subsequent violations	\$1,000.00			

(e) Penalties for octane labeling violations, including octane levels in gasoline lower than posted on the fuel dispenser.

	Between .7 and .9 octane lower	Between 1 and 1.9 octane lower	Between 2 and 2.9 octane lower	Greater than 3 octane lower
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,000.00	\$1,500.00	\$2,500.00	\$3,000.00
3rd Violation	\$2,500.00	\$3,000.00	\$5,000.00	\$6,000.00
4th and subsequent violations	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

(2) Penalties for other violations. Penalties for violations not covered under subsection (1) of this section will be determined by applying one of the above sections that is most similar to the violation and by applying aggravating and mitigating factors under WAC 16-662-170.

NEW SECTION

WAC 16-662-170 Civil penalties and enforcement—Aggravating and mitigating factors. (1) As provided under RCW 19.112.060 (1)(b), the department has discretion to determine the civil penalty based on circumstances such as the gravity of violations and the history of violations. Criteria for determining whether and how to adjust the civil

penalties specified in WAC 16-662-165 are considered aggravating and mitigating factors.

(2) When assessing a penalty using aggravating or mitigating factors, the department will provide a written summary to include the base penalty amount provided in the civil penalty section and any aggravating and/or mitigating factors it considered when arriving at a final civil penalty amount that differs from the base penalty amount.

(3) The department may increase a civil penalty based on the penalties found in WAC 16-662-165 because of aggravating factors including, but not limited to, the following:

(a) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.

(b) The number of separate violations contained within a single notice of intent.

(c) The magnitude of the harm or potential harm caused by the violation, including the degree of harm to any affected vehicles, property, people, or to the environment.

(d) The sameness or similarity of the current violation to previous violations committed within the previous two years.

(e) The extent to which the violation is part of a pattern of the same or substantially similar violations including violations at other locations operated by the same business or person.

(f) The department may assess up to the maximum penalty of ten thousand dollars as authorized under RCW 19.112.060 (1)(b) when the department determines one or more aggravating factors are associated with violations presenting grave risks to persons, property, or the environment or that represent a pattern of repeated violations presenting moderate risks to persons, property, or the environment.

(4) The department may reduce a civil penalty based on the civil penalty identified in WAC 16-662-165 because of mitigating factors including, but not limited to, the following:

(a) Voluntary disclosure of a violation.

(b) Promptly taking voluntary corrective actions to stop further harm and/or minimize the likelihood that the violation will be repeated.

(c) Promptly making appropriate restitution to any identified customers who were affected or may have been affected by the violation.

(d) Proof that the violations occurred due to structural failures or unintentional errors on the part of the business owner or operator when such failures or errors were outside the control or responsibility of the owner or operator. However, the owner or operator is responsible for the quality of fuel offered for sale at that location.

NEW SECTION

WAC 16-662-175 Other actions not precluded. When appropriate, the department may decide: Not to pursue a civil penalty; to issue a notice of correction in lieu of pursuing a civil penalty or issuing a stop sale order; to negotiate settlements of cases; and to refer violations or alleged violations to any federal, state, or county authority with jurisdiction.