

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

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

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

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

SWCAA 400-030 Definitions. This an existing SWCAA 400-040 section containing the definitions of words and phrases used throughout SWCAA 400. The proposed rule changes revise existing definitions and add new definitions, and make administrative edits. The proposed changes are necessary to maintain consistency with state and federal programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

reporting at affected sources and maintain consistency with state programs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory Authority for Adoption: RCW 70.94.141.

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

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

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

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

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

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

Date Adopted: September 1, 2016.

Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-055 filed 2/15/01, effective 3/18/01)

SWCAA 400-020 Applicability

(1) The provisions of this regulation shall apply within Clark, Cowlitz, Lewis, Skamania and Wahkiakum Counties of Washington State.

(2) The Agency ~~((is authorized to enforce this regulation and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations))~~ implements and enforces the Washington Administrative Code as adopted by Ecology in Title 173 under Chapter 70.94 RCW, except where the Agency has adopted corresponding provisions. Agency adopted provisions apply in lieu of the corresponding WAC provisions.

(a) Consistent with WAC 173-400-930 (1)(a), the Agency has chosen not to adopt WAC 173-400-930.

(3) Unless properly delegated by Ecology, the Agency does not have jurisdiction over the following sources:

(a) Specific source categories over which the State, by separate regulation, has assumed or hereafter assumes jurisdiction.

(b) Automobiles, trucks, aircraft, chemical pulp mills and primary aluminum reduction facilities.

(c) Those sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) as provided in Washington Administrative Code (WAC) 463.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-030 Definitions

Except as provided elsewhere in this regulation the following definitions apply throughout the regulation:

(1) "**Actual emissions**" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emission unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal "source" operation. The Agency 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 emission unit's

actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Agency may presume that "source" specific allowable emissions for the unit are equivalent to the actual emissions of the emission unit.

(c) For any emission unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emission unit on that date.

(2) **"Adverse impact on visibility"** means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with: (a) times of visitor use of the Federal Class I area and (b) the frequency and timing of natural conditions that reduce visibility.

(3) **"Agency"** means the Southwest Clean Air Agency (SWCAA).

(4) **"Air contaminant"** or **"air pollutant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. ~~((This includes any substance regulated as an air pollutant under Chapter 173-460 WAC, Sections 111 and 112 of the Federal Clean Air Act, ozone depleting substances (Title VI of the Federal Clean Air Act), any substance for which a primary or secondary National Ambient Air Quality Standard has been established, and volatile organic compounds.))~~ For the purposes of regulation under the Washington SIP, "air contaminant" means only:

(a) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act, but only for the purpose of meeting the requirements of Part C or to the extent those additional air contaminants are regulated in order to avoid such requirements.

(5) **"Air discharge permit"** means the same as "Order of Approval." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(6) **"Air discharge permit application"** means the same as "Notice of Construction application." This term does not apply to any permitting action conducted pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

(7) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this regulation, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of various pesticides.

(8) **"Allowable emissions"** means the emission rate of a "stationary source" calculated using the maximum rated

capacity of the "stationary source" (unless the "stationary source" is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards in 40 CFR Parts 60, 61, 62, or 63;

(b) Any applicable State Implementation Plan (SIP) emission limitation including those with a future compliance date;

(c) The emission rate specified as a federally enforceable permit condition, including those with a future compliance date; or

(d) The emission rate specified by a federally enforceable regulatory order.

(9) **"Alteration"** means the act of altering, which means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, or change in the design, operation, capacity, or arrangement of a process; any increase in the connected loading of process or control equipment; and any change in fuels, method of operation or hours of operation not previously approved by the Agency.

(10) **"Ambient air"** means the surrounding outside air.

(11) **"Ambient air quality standard"** (AAQS) means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple air contaminants in the ambient air that shall not be exceeded.

(12) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(13) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(14) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an emission unit, which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

(15) **"Best available control technology"** (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70.94 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, ~~((Part))~~ 61, 62 and ~~((Part))~~ 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to

comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(16) **"Best available retrofit technology"** (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the "stationary source," the remaining useful life of the "stationary source," and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(17) **"Board"** means the Board of Directors of the Southwest Clean Air Agency.

(18) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given emission unit in exchange for a decrease in emissions from another emission unit, pursuant to RCW 70.94.155 and SWCAA 400-120.

(19) **"Capacity factor"** means the ratio of the average load on a machine or piece of equipment to the manufacturer's capacity rating of the machine or equipment for the period of time considered.

(20) **"Class I area"** means any area designated pursuant to Sections 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas located within Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(21) **"Climate change"** means any long-term significant change over durations ranging from decades to millions of years in the "average weather" of a region or the earth as a whole.

(22) **"Combustion and incineration units"** means emission units using combustion for waste disposal, steam production, chemical recovery or other process requirements, but excludes open or outdoor burning.

(23) **"Commenced"** as applied to construction, means that an owner or operator has all the necessary preconstruction approvals or permits and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the "stationary source," to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the "stationary source" to be completed within a reasonable time.

(c) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local, and federal regulations and orders contained in the Washington SIP.

(24) **"Composting"** means the biological degradation and transformation of organic solid waste under controlled conditions designed to promote aerobic decomposition. Natural decay of organic solid waste under uncontrolled conditions is not composting.

(25) **"Concealment"** means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(26) **"Construction"** means any physical change or change in method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions. (ref. 40 CFR 52.21)

(27) **"Continuous emission 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. (ref. 40 CFR 51.166 (b)(43))

(28) **"Continuous emission 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). (ref. 40 CFR 51.166 (b)(46))

(29) **"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, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis. (ref. 40 CFR 51.166 (b)(45))

(30) **"Criteria pollutant" or "criteria air pollutant"** means an air pollutant for which a criteria document has been prepared by EPA and has a primary or secondary ambient air quality standard. These pollutants are identified in 40 CFR Part 50 and include sulfur oxides (measured as sulfur dioxide), particulate matter, carbon monoxide, ozone, oxides of nitrogen (measured as nitrogen dioxide), and lead. Although volatile organic compounds are no longer identified as a criteria pollutant category, they are regulated together with oxides of nitrogen as a precursor to ozone.

~~((28))~~ (31) **"Control Officer"** means the Executive Director of the Southwest Clean Air Agency.

~~((29))~~ (32) **"Deviation from permit requirements"** means an instance when any permit requirement is not met, including, but not limited to, conditions that establish emission limitations, emission standards, control equipment requirements, work practices, parameter ranges, and those designed to assure compliance with such requirements, such as monitoring, recordkeeping, and reporting. A deviation does not necessarily constitute a violation.

~~((30))~~ (33) **"Director"** means the director of the Washington State Department of Ecology or duly authorized representative.

~~((31))~~ (34) **"Dispersion technique"** means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

~~((32))~~ (35) **"Distillate oil"** means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-01 "Standard Specification for Fuel Oils."

~~((33))~~ (36) **"Ecology"** means the Washington State Department of Ecology.

~~((34))~~ (37) **"Emergency service"** means operation that is limited solely to emergency situations and required testing and maintenance. Emergency situations are those which occur without significant warning and are beyond the control of the permittee, owner or operator.

~~((35))~~ (38) **"Emission"** means a release of air contaminants into the ambient air.

~~((36))~~ (39) **"Emission control technology"** means emission control equipment integral or in addition to the emission unit or other technology, device, component or control parameter that is integral to the basic design of an emission unit (i.e., low NO_x burner for a boiler or turbine).

~~((37))~~ (40) **"Emission reduction credit" (ERC)** means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control. ~~((ERCs may be sold, leased, banked for future use or traded in accordance with applicable regulations. Emission reduction credits shall provide an incentive for reducing emissions below the required levels and establish a framework to promote a market-based approach to air pollution control.))~~

~~((38))~~ (41) **"Emission standard" and "emission limitation"** mean a requirement established under the Federal Clean Air Act, Chapter 70.94 RCW or a local regulation that limits the quantity, rate, or concentration of air contaminant emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or Chapter 70.94 RCW.

~~((39))~~ (42) **"Emission unit"** means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the Federal Clean Air Act, Chapter 70.94 RCW, or Chapter 70.98 RCW.

~~((40))~~ (43) **"Excess emissions"** means emissions of an air pollutant in excess of any applicable emission standard or emission limit.

~~((41))~~ (44) **"Excess stack height"** means that portion of a stack which exceeds the greater of sixty-five meters (213.25 feet) or the calculated stack height described in SWCAA 400-200~~((2))~~(3).

~~((42))~~ (45) **"Executive Director"** means the Control Officer of the Southwest Clean Air Agency.

~~((43))~~ (46) **"Existing stationary facility"** means a "stationary source" that meets all of the following conditions:

(a) The "stationary source" was not in operation prior to August 7, 1962, and was in existence on August 7, 1977;

(b) The "stationary source" is one of the following:

(i) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input,

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

(ix) Municipal incinerators capable of charging more than 250 tons of refuse per day,

(x) Hydrofluoric, sulfuric, or nitric acid plants,

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,

(xiv) Coke oven batteries,

(xv) Sulfur recovery plants,

(xvi) Carbon black plants (furnace process),

(xvii) Primary lead smelters,

(xviii) Fuel conversion plants,

(xix) Sintering plants,

(xx) Secondary metal production plants,

(xxi) Chemical process plants,

(xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,

(xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,

(xxiv) Taconite ore processing plants,

(xxv) Glass fiber processing plants,

(xxvi) Charcoal production plants; and

(c) The "stationary source" has the potential to emit 250 tons per year or more of any air contaminant. Fugitive emissions, to the extent quantifiable, must be counted in determining the potential to emit.

(d) For purposes of determining whether a stationary source is an existing stationary facility the term "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). Pollutant emitting activities shall be considered as part of 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.

~~((44))~~ (47) **"Federal Clean Air Act"** (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

~~((45))~~ (48) **"Federal Class I area"** means any federal land that is classified or reclassified as Class I. The Federal Class I areas in Washington State are as follows:

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

~~((46))~~ (49) **"Federal land manager"** means the secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior-National Park Service, the U.S. Department of Agriculture-Forest Service, and/or the U.S. Department of the Interior-Bureau of Land Management.

~~((47))~~ (50) **"Federally enforceable"** means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or any order of approval established under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091 or SWCAA 400-091.

~~((48))~~ (51) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((49))~~ (52) **"Fugitive dust"** means a type of particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((50))~~ (53) **"Fugitive emissions"** means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. ~~(Fugitive emissions are to be considered in determining whether a stationary source is a major source under section 112 of the Federal Clean Air Act.)~~

~~((51))~~ (54) **"General process unit"** means an emission unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((52))~~ (55) **"Good agricultural practices"** means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area.

~~((53))~~ (56) **"Good engineering practice"** (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2)(a)(ii).

~~((54))~~ (57) **"Greenhouse gas"** means ~~(a gas that has the ability to contribute to a greenhouse effect in the ambient atmosphere. Greenhouse gases include)~~, for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

~~((55))~~ (58) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

~~((56))~~ (59) **"In operation"** means engaged in activity related to the primary design function of a "stationary source."

~~((57))~~ (60) **"Installation"** means the act of installing, placing, assembling or constructing process equipment or control equipment at the premises where the equipment will

be used. Installation includes all preparatory work at such premises.

~~((58))~~ (61) **"Lowest achievable emission rate"** (LAER) means for any "stationary source" that rate of emissions which reflects the more stringent of:

(a) The most stringent emission 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 new or modified "stationary source" demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of "stationary source." In no event shall the application of this term permit a proposed new or modified "stationary source" to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

~~((59))~~ (62) **"Maintenance Area"** or **"Maintenance Plan Area"** means a geographical area within the jurisdiction of SWCAA which was formerly designated as a nonattainment area and which has been redesignated as an attainment area as provided under Section 107(d) of the Federal Clean Air Act. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

~~((60))~~ (63) **"Maintenance pollutant"** means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((61))~~ (64)(a) **"Major modification,"** as it applies to "stationary sources" subject to requirements for "new sources" in ~~(maintenance plan or)~~ nonattainment areas ~~((SWCAA 400-111 and 400-112))~~, means the same as the definition found in SWCAA 400-810. ~~((any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.~~

(i) ~~Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

(ii) ~~A physical change or change in the method of operation shall not include:~~

~~(A) Routine maintenance, repair, and replacement;~~
~~(B) Use of an alternative fuel or raw material by reason of an order under Section 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;~~

~~(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;~~

~~(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;~~

~~(E) Use of an alternative fuel or raw material by a "stationary source" which:~~

~~(1) The "stationary source" was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit or approval order condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or~~

(H) The "stationary source" is approved to use under any permit or approval order issued under SWCAA 400-112 or WAC 173-400-112;

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit or approval order condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation;

(G) Any change in ownership at a "stationary source;"

(H) The addition, replacement, or use of a pollution control project (as defined in 40 CFR 51.165 (a)(1)(xxv), in effect on July 1, 2002) at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(I) When the permitting agency has reason to believe that the pollution control project would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any; and

(H) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation; or

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the Washington SIP; and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.))

(b) "**Major modification**," as it applies to "stationary sources" subject to requirements for "new sources" in main-tenance plan, attainment, or unclassified areas ((SWCAA 400-113)), means the same as the definition found in WAC 173-400-710. ((any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

(i) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(ii) A physical change or change in the method of operation shall not include:

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under Section 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;

(C) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Clean Air Act;

(D) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(E) Use of an alternative fuel or raw material by a "stationary source" which:

(I) The "stationary source" was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or Order of Approval which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation, or

(H) The "stationary source" is approved to use under any PSD permit;

(F) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition or an approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation;

(G) Any change in ownership at a "stationary source;"

(H) The addition, replacement, or use of a pollution control project at an existing electric utility steam generating unit, unless the permitting agency determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(I) When the permitting agency has reason to believe that the pollution control project (as defined in 40 CFR 51.166, in effect on July 1, 2002) would result in a significant net emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any; and

(H) The permitting agency determines that the increase will cause or contribute to a violation of any National Ambient Air Quality Standard or PSD increment, or visibility limitation; or

(I) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the Washington SIP, and other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.))

((62)) (65)(a) "**Major stationary source**," as it applies to "stationary sources" subject to requirements for "new sources" in ((maintenance plan or)) nonattainment areas ((SWCAA 400-111 and -112)), means the same as the definition found in SWCAA 400-810.((:

(i) Any "stationary source" of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act, except that lower emissions thresholds shall apply as follows:

(A) 70 tons per year of PM₁₀ in any "serious" nonattainment area for PM₁₀;

(B) 50 tons per year of carbon monoxide (CO) in any "serious" nonattainment area for CO where "stationary sources" contribute significantly to CO levels in the area.

(ii) Any physical change that would occur at a "stationary source" not qualifying under (a)(i) of this subsection as a "major stationary source," if the change would constitute a "major stationary source" by itself.

(iii) A "major stationary source" that is major for volatile organic compounds or NO_x shall be considered major for ozone.

(iv) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major stationary source," unless the "stationary source" belongs to one of the following categories of "stationary sources" or the "stationary source" is major due to (a)(i)(A) or (a)(i)(B) of this subsection:

- (A) Coal cleaning plants (with thermal dryers);
- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;
- (K) Lime plants;
- (L) Phosphate rock processing plants;
- (M) Coke oven batteries;
- (N) Sulfur recovery plants;
- (O) Carbon black plants (furnace process);
- (P) Primary lead smelters;
- (Q) Fuel conversion plants;
- (R) Sintering plants;
- (S) Secondary metal production plants;
- (T) Chemical process plants;
- (U) Fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (W) Taconite ore processing plants;
- (X) Glass fiber processing plants;
- (Y) Charcoal production plants;
- (Z) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input; and
- (AA) Any other "stationary source" category, which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Federal Clean Air Act.

(v) For purposes of determining whether a "stationary source" is a "major stationary source," the term "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). 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.)

(b) "Major stationary source," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment or unclassified areas (((\$WCAA 400-113))), means the same as the definition found in WAC 173-400-710.((:

(i) Any of the following "stationary sources" of air pollutants which emits, or has the potential to emit, 100 tons per

year or more of any pollutant subject to regulation under the Federal Clean Air Act:

- (A) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - (B) Coal cleaning plants (with thermal dryers);
 - (C) Kraft pulp mills;
 - (D) Portland cement plants;
 - (E) Primary zinc smelters;
 - (F) Iron and steel mill plants;
 - (G) Primary aluminum ore reduction plants;
 - (H) Primary copper smelters;
 - (I) Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - (J) Hydrofluoric, sulfuric, and nitric acid plants;
 - (K) Petroleum refineries;
 - (L) Lime plants;
 - (M) Phosphate rock processing plants;
 - (N) Coke oven batteries;
 - (O) Sulfur recovery plants;
 - (P) Carbon black plants (furnace process);
 - (Q) Primary lead smelters;
 - (R) Fuel conversion plants;
 - (S) Sintering plants;
 - (T) Secondary metal production plants;
 - (U) Chemical process plants;
 - (V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;
 - (W) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (X) Taconite ore processing plants;
 - (Y) Glass fiber processing plants; and
 - (Z) Charcoal production plants.
- (ii) Regardless of the "stationary source" size specified in (b)(i) of this subsection, any "stationary source" which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

(iii) Any physical change that would occur at a "stationary source" not otherwise qualifying under (b)(i) or (ii) of this subsection, as a "major stationary source" if the change would constitute a "major stationary source" by itself.

(iv) A "major stationary source" that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(v) The fugitive emissions of a "stationary source" shall not be included in determining whether it is a "major stationary source," unless the "stationary source" belongs to one of the following categories:

- (A) Coal cleaning plants (with thermal dryers);
- (B) Kraft pulp mills;
- (C) Portland cement plants;
- (D) Primary zinc smelters;
- (E) Iron and steel mills;
- (F) Primary aluminum ore reduction plants;
- (G) Primary copper smelters;
- (H) Municipal incinerators capable of charging more than 50 tons of refuse per day;
- (I) Hydrofluoric, sulfuric, or nitric acid plants;
- (J) Petroleum refineries;

(K) Lime plants;
 (L) Phosphate rock processing plants;
 (M) Coke oven batteries;
 (N) Sulfur recovery plants;
 (O) Carbon black plants (furnace process);
 (P) Primary lead smelters;
 (Q) Fuel conversion plants;
 (R) Sintering plants;
 (S) Secondary metal production plants;
 (T) Chemical process plants;
 (U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other "stationary source" category that is being regulated under Section 111 or 112 of the Federal Clean Air Act as of August 7, 1980.

(vi) For purposes of determining whether a "stationary source" is a "major stationary source," the term "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). 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.)

((63)) (66) "**Malfunction**" means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not considered to be malfunctions.

((64)) (67) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the Federal Clean Air Act. The mandatory Class I federal areas potentially affected by emissions from "sources" within SWCAA jurisdiction include the following:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) Mt. Hood Wilderness Area;
- (g) Mt. Jefferson Wilderness Area;
- (h) North Cascades National Park;
- (i) Olympic National Park; and
- (j) Pasayten Wilderness.

((65)) (68) "**Masking**" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

((66)) (69) "**Materials handling**" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

((67)) (70) "**Modification**" means any physical change in, or change in the method of operation of, a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

((68)) (71) "**Motor vehicle**" means any ~~(self-propelled vehicle required to be licensed pursuant to Chapter 46.16 RCW)~~ vehicle which is self-propelled and capable of transporting a person or persons or any material or any permanently or temporarily affixed apparatus shall be deemed a motor vehicle, unless any one or more of the criteria set forth below are met, in which case the vehicle shall be deemed not a motor vehicle:

(1) The vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces; or

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; or

(3) The vehicle exhibits features which render its use on a street or highway unsafe, impractical, or highly unlikely, such features including, but not being limited to, tracked road contact means, an inordinate size, or features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry.

((69)) (72) "**National Ambient Air Quality Standard**" (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM₁₀, PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

((70)) (73) "**National Emission Standards for Hazardous Air Pollutants**" (NESHAPS) means the federal rules in 40 CFR Part 61.

((71)) (74) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

((72)) (75) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

((73)) (76)(a) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in ~~((maintenance plan or))~~ nonattainment areas ~~((SWCAA 400-111 and 400-112))~~, means the same as the definition found in SWCAA 400-810.~~((~~

~~(i) The amount by which the sum of the following exceeds zero:~~

~~(A) Any increase in actual emissions from a particular physical change or change in method of operation at a "stationary source"; and~~

~~(B) Any other increases and decreases in actual emissions at the "stationary source" that are contemporaneous with the particular change and are otherwise creditable.~~

~~(ii) 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.~~

~~(iii) An increase or decrease in actual emissions is creditable only if:~~

~~(A) It occurred no more than one year prior to the date of submittal of a complete air discharge permit 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.~~

~~(B) The permitting agency has not relied on it in issuing any permit or order of approval for the "stationary source" under this section or a previous SIP approved nonattainment area new source review regulation, which order or permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(iv) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(v) A decrease in actual emissions is creditable only to the extent that:~~

~~(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;~~

~~(B) It is federally enforceable at and after the time that actual construction on the particular change begins;~~

~~(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and~~

~~(D) The permitting agency has not relied on it in issuing any permit or order of approval under this section or a SIP approved nonattainment area new source review regulation; or the permitting agency has not relied on it in demonstrating attainment or reasonable further progress.~~

~~(vi) An increase that results from a physical change at a "stationary source" occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shutdown becomes operational only after a reasonable shutdown period, not to exceed 180 calendar days.)~~

~~(b) "Net emissions increase," as it applies to "stationary sources" subject to requirements for "new sources" in main-tenance plan, attainment or unclassified areas ((SWCAA 400-113)), means the same as the definition found in WAC 173-400-710.((:~~

~~(i) The amount by which the sum of the following exceeds zero:~~

~~(A) Any increase in actual emissions from a particular physical change or change in the method of operation at a "stationary source"; and~~

~~(B) Any other increases and decreases in actual emissions at the "stationary source" that are contemporaneous with the particular change and are otherwise creditable.~~

~~(ii) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within five years before the date that the increase from the particular change occurs.~~

~~(iii) An increase or decrease in actual emissions is creditable only if the permitting agency or EPA has not relied on it in issuing a PSD permit for the "stationary source," which permit is in effect when the increase in actual emissions from the particular change occurs.~~

~~(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀.~~

~~(v) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(vi) A decrease in actual emissions is creditable only to the extent that:~~

~~(A) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;~~

~~(B) It is federally enforceable at and after the time that actual construction on the particular change begins; and~~

~~(C) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.~~

~~(vii) An increase that results from a physical change at a "stationary source" occurs when the emission unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shutdown becomes operational only after a reasonable shutdown period, not to exceed 180 calendar days.)~~

~~((74)) (7) "New source" means one or more of the following:~~

~~(a) The construction or modification of a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emission of any air contaminant not previously emitted;~~

~~(b) Any other project that constitutes a "new source" under the Federal Clean Air Act;~~

~~(c) Restart of a "stationary source" after permanent shutdown;~~

~~(d) The installation or construction of a new "emission unit"; ((ø))~~

~~(e) Relocation of a "stationary source" to a new location, except in the case of portable sources operating under a valid permit as provided in SWCAA 400-110(6);~~

~~(f) Replacement or modification of the burner(s) in a combustion source; or~~

~~(g) Modification of a combustion source to fire a fuel that the source was not previously capable of firing.~~

~~((75)) (78) "New Source Performance Standards" (NSPS) means the federal rules in 40 CFR Part 60.~~

~~((76))~~ (79) **"Nonattainment area"** means a geographic area designated by EPA in 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria air pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((77))~~ (80) **"Nonroad engine"** means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indications of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under Section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under Section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine(s) that replace(s) an engine at a location and that is intended to perform the same or similar function as the engine(s) replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a "stationary source" that remains in a single location on a permanent basis (i.e., two seasons or more) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location. (ref. 40 CFR 89.2)

~~((78))~~ (81) **"Nonroad engine permit"** means a regulatory order issued by the Agency to approve the installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((79))~~ (82) **"Nonroad engine permit application"** means a written application for installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((80))~~ (83) **"Notice of Construction application"** (NOC) means a written application requesting approval for installation, replacement, modification, or other alteration of an emission unit at an air contaminant source or replacement

or substantial alteration of control technology at an existing "stationary source." Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109.)

~~((81))~~ (84) **"Opacity"** means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((82))~~ (85) **"Open burning"** or **"outdoor burning"** means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWCAA 425-020. Wood waste disposal in wigwam burners is not considered open or outdoor burning.

~~((83))~~ (86) **"Operating permit"** means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((84))~~ (87) **"Operating permit application"** means the same as "application" as described in WAC 173-401-500 and -510.

~~((85))~~ (88) **"Order"** means any regulatory order issued by the Agency or Ecology pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

~~((86))~~ (89) **"Order of Approval"** means a regulatory order issued by the Agency or Ecology to approve a Notice of Construction or air discharge permit application. "Order of Approval" means the same as "air discharge permit." Note: For more information refer to SWCAA 400-230.

~~((87))~~ (90) **"Ozone depleting substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((88))~~ (91) **"Particulate matter"** (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((89))~~ (92) **"Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, Chapter I of the Code of Federal Regulations or by a test method specified in the Washington SIP.

~~((90))~~ (93) **"Parts per million by volume"** (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, ~~((When calculating or measuring the ppmv of a given gas or carrier stream, such measurement or calculation shall be))~~ exclusive of water ~~((and particulate matter))~~ or particulates.

~~((91))~~ (94) **"Permanent shutdown"** means permanently stopping or terminating the operation of a "stationary source" or "emission unit." Except as provided in subsections

(a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees.

(a) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in SWCAA 400-100 (5). Failure to file such a report does not mean that a shutdown was not permanent.

(b) Failure to pay registration fees for greater than two consecutive years is presumed to constitute a permanent shutdown.

(c) Any actual shutdown lasting ~~((five))~~ two or more years is presumed to be permanent.

~~((92))~~ (95) "**Permitting agency**" means Ecology or the local air pollution control agency with jurisdiction over a "source."

~~((93))~~ (96) "**Person**" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

~~((94))~~ (97) "**Pipeline quality natural gas**" means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

~~((95))~~ (98) "**PM₁₀**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((96))~~ (99) "**PM₁₀ emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((97))~~ (100) "**PM_{2.5}**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((98))~~ (101) "**PM_{2.5} emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part ~~((50))~~ 51 or by a test method specified in the Washington SIP.

~~((99))~~ (102) "**Pollutant**" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions (4) and (7))

~~((100))~~ (103) "**Portable ~~((equipment))~~ source**" means a "stationary source" consisting of one or more emission units that is portable or transportable and capable of being operated at multiple locations. ~~((Portable equipment is subject to the requirements of SWCAA 400-109 and 400-110.))~~ Portable ~~((equipment))~~ source includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

ited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

~~((101))~~ (104) "**Potential to emit**" means the maximum capacity (i.e., design capacity) of a "stationary source" to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the "stationary source" to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a "stationary source."

(105) "**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, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis. (ref 40 CFR 51.166 (b)(44))

~~((102))~~ (106) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400(~~(-141))~~ -700 through WAC 173-400-750 and adopted by reference in SWCAA 400-141.

~~((103))~~ (107) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((104))~~ (108) "**Reasonably attributable**" means attributable by visual observation or any other technique the Agency deems appropriate.

~~((105))~~ (109) "**Reasonably available control technology**" (RACT) means the lowest emission limit that a particular "stationary source" or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual "stationary source" or source category taking into account the impact of the "stationary source" upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any "stationary source" or source category shall be adopted only after public notice and opportunity for comment are afforded. RACT shall apply to existing "stationary sources."

~~((106))~~ (110) "**Regulatory order**" means an order issued by the Agency or Ecology to an air contaminant source~~(s)~~ to achieve compliance with any applicable provision of Chapter 70.94 RCW, ~~((or the))~~ rules adopted there under, or~~(s)~~ the regulations of the Agency. Note: For further clarification, refer to the definitions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

~~((107))~~ (111) "**Residual Oil**" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the

American Society for Testing and Materials in ASTM D396-01.

~~((108))~~ (112) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions ~~((may))~~ include ~~((, but are not limited to:~~

~~(a) Emissions from ships or trains located at the new or modified "major stationary source"; and~~

~~(b))~~ emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification." Secondary emissions do not include any emissions that come directly from a mobile source, such as tailpipe emissions from a motor vehicle, train, or vessel.

~~((109))~~ (113) "**Shutdown**" means the cessation of operation of an affected source or portion of an affected source for any purpose.

~~((110))~~ (114)(a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in ~~((maintenance plan or))~~ nonattainment areas ~~((SWCAA 400-111 and 400-112))~~, means the same as the definition found in SWCAA 400-810. ((in reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<i>Pollutant</i>	<i>Emission Rate</i>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Volatile organic compounds:	40 tpy
Lead:	0.6 tpy
PM ₁₀ :	15 tpy))

(b) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan, attainment, or unclassified areas ~~((SWCAA 400-113))~~, means the same as the definition found in WAC 173-400-710.((:

~~(i) In reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

<i>Pollutant</i>	<i>Emission Rate</i>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy—PM 15 tpy—PM ₁₀

<i>Pollutant</i>	<i>Emission Rate</i>
Volatile organic compounds:	40 tpy
Fluorides:	3 tpy
Lead:	0.6 tpy
Sulfuric acid mist:	7 tpy
Hydrogen sulfide (H ₂ S):	10 tpy
Total reduced sulfur (including H ₂ S):	10 tpy
Reduced sulfur compounds (including H ₂ S):	10 tpy
Municipal waste combustor organics: (measured as total tetra through octa-chlorinated dibenzo p dioxins and dibenzofurans)	3.2 grams per year (0.112 oz. per year or 49 grains per year)
Municipal waste combustor metals: (measured as particulate matter)	14 megagrams per year (15 tpy)
Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride)	36 megagrams per year (40 tpy)
Municipal solid waste landfill emissions: (measured as nonmethane organic compounds)	45 mega grams per year (50 tpy)
Ozone-depleting substances (in effect on July 1, 2000):	100 tpy

~~(ii) In reference to a "net emissions increase" or the potential of a "stationary source" to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b)(i) of this subsection does not list, any emissions rate. However, for purposes of the applicability of this section, the hazardous air pollutants listed under Section 112(b) of the Federal Clean Air Act, including the hazardous air pollutants that may have been added to the list, are not considered subject to regulation.~~

~~(iii) Regardless of the definition in (b)(i) of this subsection, significant means any emissions rate or any net emissions increase associated with a "major stationary source" or "major modification" which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 microgram per cubic meter (24 hour average).))~~

~~((111))~~ (115) "**SIP**" means the same as "State Implementation Plan".

~~((112))~~ (116) "**Source**" means all of the emission units (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a

single product or functionally related group of products 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.

((113)) (117) "**Source category**" means all "sources" or "stationary sources" of the same type or classification as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

((114)) (118) "**Southwest Clean Air Agency**" (SWCAA) means the local clean air agency empowered to enforce and implement the Federal Clean Air Act 42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter 70.94 RCW) in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

((115)) (119) "**Stack**" means any emission point in a "stationary source" designed to emit solids, liquids, or gases into the air, including a pipe or duct.

((116)) (120) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

((117)) (121) "**Standard conditions**" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury.

((118)) (122) "**Startup**" means the setting in operation of an affected source or portion of an affected source for any purpose.

((119)) (123) "**State Implementation Plan**" or "**Washington SIP**" means the Washington SIP in 40 CFR Part 52, Subpart WW. The SIP contains federal, state and local regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

((120)) (124) "**Stationary source**" means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine or non-road vehicle as defined in Section 216(11) of the Federal Clean Air Act.

((121)) (125) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

((122)) (126) "**Synthetic minor**" means any "stationary source" whose potential to emit has been limited below applicable air operating permit program (40 CFR Part 70) thresholds by means of a federally enforceable order, rule or permit condition.

((123)) (127) "**Total reduced sulfur**" (TRS) means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA Method 16 in 40 CFR Part 60, Appendix A or an EPA approved equivalent method and expressed as hydrogen sulfide.

((124)) (128) "**Total suspended particulate**" (TSP) means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

((125)) (129) "**Toxic air pollutant**" (TAP) means any Class A or B toxic air pollutant listed in WAC 173-460-150 or -160 as in effect on August 21, 1998. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or -160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

((126)) (130) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.

((127)) (131) "**United States Environmental Protection Agency**" (USEPA) means the federal agency empowered to enforce and implement the Federal Clean Air Act (42 USC 7401, et seq.) and shall be referred to as EPA.

((128)) (132) "**Upgraded**" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overfill protection that involves removal of ground or ground cover above a portion of the product piping.

((129)) (133) "**Upset condition**" means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.

((130)) (134) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

((131)) (135) "**Visibility impairment of Class I areas**" means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.

((132)) (136) "**Volatile organic compound**" (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-deca-

fluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C₄F₉OCH₃); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C₄F₉OC₂H₅); 2-(ethoxy difluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF₃)₂CFCF₂OC₂H₅); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; and perfluorocarbon compounds that fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOCs will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by the Agency or EPA.

(c) As a precondition to excluding negligibly-reactive compounds as VOC, or at any time thereafter, the Agency may require an owner or operator to provide monitoring or testing methods and results demonstrating to the satisfaction of the Agency or EPA the amount of negligibly-reactive compounds in the "source's" emissions.

(d) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements:

(i) Tertiary butyl acetate.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions

(1) **Applicability.** Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction without filing an air discharge permit application pursuant to SWCAA 400-109 or obtaining an air discharge permit pursuant to SWCAA 400-110 provided the requirements of this section are met. If the owner or operator of such a portable source does not wish to utilize the provisions of this section, an air discharge permit application must be filed for the portable source pursuant to SWCAA 400-109. Portable sources that have a valid air discharge permit issued by SWCAA must operate in accordance with the SWCAA permit, and may not use the provisions of this section. This section does not apply to nonroad engines of any type.

(2) **Nonattainment areas.** If a portable source is locating in a nonattainment area and emits the pollutant(s) or pollutant precursors for which the area is classified as nonattainment, the source must acquire a site-specific air discharge permit from SWCAA.

(3) **Major Stationary Source.** If a portable source is a major stationary source then the source must also comply with applicable requirements from WAC 173-400-700 through 173-400-750.

(4) **General Requirements.** Portable sources must comply with the requirements listed below in order to gain coverage under this section.

(a) The portable source must possess a valid approval issued by a Washington air pollution control authority after July 1, 2010. The approval must identify the affected emission units as a portable source.

(b) Approval for the portable source must contain emission limitations and operational requirements that are consistent with BACT as determined by SWCAA for similar sources.

(c) The owner/operator of the portable source must pay a review fee of \$500.

(d) The owner/operator must obtain written confirmation from SWCAA that the portable source complies with the provisions of this section prior to commencing operation within SWCAA jurisdiction.

(e) The owner/operator of the portable source must submit a relocation notice and a copy of the applicable order of approval or air discharge permit to SWCAA at least 15 calendar days prior to commencing operation within SWCAA jurisdiction. An additional relocation notice shall be submitted for each subsequent location at which the source operates.

(f) The owner/operator shall register the portable source with SWCAA, and pay a registration fee of \$90 per emission unit prior to commencement of operation. For the purposes of this registration, the term emission unit means each rock crusher and aggregate screen and associated haul roads. Registration expires at the end of the Agency's fiscal year. If a permitted unit is still operating after its registration expires, it shall be reregistered including payment of the annual registration fee.

(g) The owner/operator must submit an emission inventory report to SWCAA as described in SWCCA 400-105(1). The inventory report must contain information sufficient to enable calculation of air emissions from operation of the portable source within SWCAA jurisdiction. If the portable

source operated at multiple locations, the inventory report must identify emissions specific to each location.

(5) **Enforcement of approval conditions.** SWCAA will enforce all terms and conditions contained in the portable source's order of approval or air discharge permit, regardless of which permitting authority approved the portable source.

(6) **Modification of approval conditions.** Terms and conditions contained in the portable source's order of approval or air discharge permit may only be modified by obtaining a new air discharge permit from SWCAA.

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-040 General Standards for Maximum Emissions

All "sources" and emission units are required to meet the emission standards of this section. Where an emission standard listed in another section is applicable to a specific emission unit, such standard shall take precedent over a general emission standard listed in this section. When two or more emission units are connected to a common stack and the operator elects not to provide the means or facilities to sample emissions from the individual emission units, and the relative contributions of the individual emission 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 emission units.

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

(1) **Visible emissions.** No person shall cause or permit the emission for more than three minutes, in any one hour, of an air contaminant (~~from any emission unit~~) which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity as determined in accordance with SWCAA Method 9, Ecology Method 9A or 9A-Alternate 1 (LIDAR) 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 permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. Except for testing and troubleshooting, soot blowing/grate cleaning is to be scheduled for the same approximate times each day. The boiler operator shall maintain a written schedule on file with the Agency, and provide updates as necessary.

(b) When the owner or operator of an emission unit 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 Agency 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 the twenty percent opacity standard.

(i) **Military training.** Visible emissions resulting from military obscurant training exercises is 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 agency, 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 cancel the training exercise, or cease the use of obscurant during the training exercise until weather conditions would allow such training to occur without causing obscurant to leave the site boundary of the military site/reservation.

(ii) **Certification Testing.** Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR 60, Appendix A, Reference 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.

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

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

(3) **Fugitive emissions.** The owner or operator of any emission unit engaging in materials handling, construction, demolition or any other operation that emits fugitive emissions:

(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 emission unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area, 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.

(4) **Odors.**

(a) ~~(Any)~~ No 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 must be used to reduce ((these)) odors to a reasonable minimum. The Agency may take enforcement action under this section if it documents the following:

(i) The detection by the Executive Director or a duly authorized representative of an odor at Level 3 or greater, according to the following odor scale:

<u>Level 0</u>	<u>No odor detected.</u>
<u>Level 1</u>	<u>Odor barely detected.</u>
<u>Level 2</u>	<u>Odor is distinct and definite, any unpleasant characteristics recognizable.</u>
<u>Level 3</u>	<u>Odor is objectionable enough or strong enough to cause attempts at avoidance, and</u>
<u>Level 4</u>	<u>Odor is so strong that a person does not want to remain present; and</u>

(ii) An affidavit from a person making a complaint that demonstrates that they have experienced odor emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property.

~~((A "source" that is a manufacturing process shall not be considered in violation of this section provided that:~~

~~(i) The "source" is implementing all reasonable means of odor control and abatement including, but not limited to, Best Available Control Technology (BACT), Maximum Available Control Technology (MACT), or Lowest Achievable Emission Rate (LAER), as applicable for odor control and abatement;~~

~~(ii) All odor control measures are properly maintained and operated; and~~

~~(iii) The "source" is operating in compliance with other applicable regulations and emission limits.~~

~~((e)) When the "source" is using "good agricultural practices," as provided in RCW 70.94.640, no violation of this section shall have occurred.~~

(5) Emissions detrimental to persons or property. No person shall cause or permit 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.

(6) Sulfur dioxide.

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emission unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent carbon dioxide as required by the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes.

(7) Concealment and masking. No person shall cause or permit the installation or use of any means that conceals or masks an emission of an air contaminant which would otherwise violate any provisions of this section.

(8) Fugitive dust sources.

(a) The owner or operator of any "source" of fugitive dust shall take reasonable precautions to prevent fugitive dust

from becoming airborne and shall maintain and operate the "source" to minimize emissions.

(b) The owner(s) or operator(s) of any existing "stationary source(s)" of fugitive dust that has been identified as a significant contributor to a PM₁₀ or PM_{2.5} nonattainment area shall be required to use reasonably available control technology (RACT) to control emissions. The status of a "stationary source" as a significant contributor will be determined by the criteria found in SWCAA 400-113(3).

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-045 Permit Application for Nonroad Engines

(1) Purpose. A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) Applicability. The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for the following:

(a) Engines put into service prior to November 9, 2003;

(b) Nonroad engine installations with an aggregate power rating less than 500 horsepower;

(c) Individual nonroad engines with a power rating less than 50 horsepower;

~~((b))~~ (d) Small/residential water well drilling rigs;

~~((e))~~ (e) Portable firefighting equipment;

~~((d))~~ (f) Mobile cranes and pile drivers;

~~((e))~~ (g) Engines used for emergency flood control;

~~((f))~~ (h) Engines used to power carnival or amusement rides; ((e))

~~((g))~~ (i) Engines used to power portable equipment (sign boards, lights, compressors, etc.) operating in support of short term construction or maintenance projects (< 1 year in duration);

~~((h))~~ (j) Engines used to replace utility power or utility powered equipment on ((an emergency)) a temporary basis (< 30 days in duration) provided that such engines are EPA Tier certified and use fuel with a maximum sulfur content of 0.0015% by weight;

(k) Engines used in, or on, a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (e.g., mobile cranes, bulldozers, forklifts, etc.); or

(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.

(3) Application Submittal. The owner or operator shall submit a complete nonroad engine permit application ((shall be submitted)) for each new installation, replacement, or other alteration of a nonroad engine.

(4) Application Fees. A filing fee of \$500 plus a review fee, as shown in Table A, shall be submitted with the ~~((applicant))~~ application prior to Agency review. If additional types

of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B]).

Expedited Application Review

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited review, the applicant must pay double the normal application and review fee. An expedited permit application will be processed as soon as possible and will receive priority over non-expedited applications.

**TABLE A
Nonroad Engine Permit Application Review Fees**

<i>Equipment/ Activity</i>	<i>Associated Work Hours*</i>	<i>Review Fee</i>
i. Nonroad Engine (Aggregate horsepower rating):		
500 or more but less than 2,000	14	1,000.00
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
ii. Minor Change to Existing Permit Conditions:	8	\$600.00
iii. Other (Not classified above):	\$200.00 per ton of emission	
iv. Emergency Applications	Double the normal application and review fee	

**TABLE B
Additional Review Fees**

<i>Equipment/ Activity</i>	<i>Associated Work Hours*</i>	<i>Review Fee</i>
v. State Environmental Policy Act (SEPA) - Lead Agency		
Minor	14	\$1,000.00
Major	35	2,500.00
vi. Environmental Impact Statement (EIS) Review		
Minor	11	\$800.00
Major	28	2,000.00
vii. Variance request	11	\$800.00
viii. Review of ambient impact analysis		\$70.00/hr

*If the staff time required to review a permit application exceeds the number of work hours associated with the applicable fee specified in Tables A and B, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

(5) **Agency actions.** Each acceptable and complete non-road engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(6) Withdrawn or exempt applications.

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-046 Application Review Process for Non-road Engines

(1) Applicability.

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(115). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) Requirements.

(a) Provided that all review requirements are met, a non-road engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with appli-

cable ambient air quality standards ((See Table A below)). Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A.

**((TABLE A
Emission Concentration Regulatory Standards**

Pollutant	Averaging Period	PSD Ambient Increment <i>40 CFR 51.166(e)</i>		National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i>		State Ambient Air Quality Standards <i>173-170, 174, and 175 WAC</i>
		Class I µg/m ³	Class II µg/m ³	Primary Standard µg/m ³ (ppm)	Secondary Standard µg/m ³ (ppm)	Ambient Standard µg/m ³ (ppm)
Carbon Monoxide (CO)	8-Hour	-	-	10,000 ^b (9.0)	-	10,000 ^b (9.0)
	1-Hour	-	-	40,000 ^b (35.0)	-	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂)	Annual ^a (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃)	1-Hour ^c	-	-	(0.12)	(0.12)	(0.12)
	8-Hour ^d	-	-	(0.075)	(0.075)	-
Sulfur Dioxide (SO ₂)	Annual ^a	2	20	80 (0.03)	-	53 (0.02)
	24-Hour	5	91	365 ^b (0.14)	-	260 ^b (0.10)
	3-Hour	25	512	-	1,300 ^b (0.50)	-
	1-Hour	-	-	-	-	1,065 ^b (0.40)
Lead	Quarterly Average	-	-	1.5	1.5	1.5
Particulate Matter less than 10 µm (PM ₁₀)	Annual (arithmetic mean)	4	17	-	-	50
	24-Hour ^h	8	30	150 ^b	150 ^b	150 ^b
Particulate Matter less than 2.5 µm (PM _{2.5})	Annual ^a (arithmetic mean)	-	-	15	15	-
	24-Hour ^h	-	-	35	35	-

µg/m³ = micrograms per cubic meter; ppm = parts per million

^a Never to be exceeded.

^b Not to be exceeded more than once per year.

^c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.

^d Also, 0.25 ppm not to be exceeded more than twice in seven days.

^e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.

^f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.

^g Based on the 3-year average of annual arithmetic mean PM_{2.5} concentrations.

^h Based on the 3-year average of the 98th percentile of 24-hour PM_{2.5} concentrations at each monitor within an area.

ⁱ Based on the 99th percentile of 24-hour PM₁₀ concentrations at each monitor.

Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted.
Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.))

If the ambient impact of a proposed project could potentially exceed an applicable ambient air ((~~increment~~) standard), the Agency may require that the applicant demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, ((2008) 2015). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) **Application processing/completeness determination.** Within 30 calendar days of receipt of a nonroad engine

permit application, the Agency 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.

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-

171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall 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 Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration ~~((is not commenced))~~ does not occur within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. ~~((This provision does not apply to the time period between commencement of the approved phases of a phased project. Each phase of the project must commence within eighteen months of the projected and approved commencement date.))~~ The Agency may specify an earlier date for ~~((commencement))~~ installation or alteration in a nonroad engine permit.

If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.

(8) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon

according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-045(3) shall apply to these requests.

(c) Actions taken under this subsection may be subject to the public involvement provisions of SWCAA 400-171.

(9) **Engine registration.** The owner or operator of nonroad engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee according to the schedule below. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and pay a second registration fee.

Engine Rating (per unit)	Registration Fee
500 horsepower or less	\$250
More than 500 horsepower	\$350

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

(1) **Particulate matter emissions.** Combustion and incineration emission units shall meet all requirements of SWCAA 400-040 and, in addition, no person shall cause or permit emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emission unit combusting wood derived fuels for the production of steam. No person shall allow or permit the emission of particulate matter from an emission unit combusting wood derived fuels for the production of steam in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA Method 5 in 40 CFR Part 60, Appendix A or other acceptable sampling methods approved in advance by both the Agency and EPA.

(2) **Fuel oil sulfur content limit.** Effective January 1, 2015, combustion and/or incineration units shall not be fired on a fuel oil with a sulfur content greater than 15 ppm by weight (ppmw). Affected emission units include, but are not limited to, process boilers, aggregate dryers, internal combustion engines, small incinerators, and space heaters. This prohibition supersedes existing permit terms allowing the use of fuel oil with higher sulfur contents. Noncompliant fuel purchased prior to the effective date of this requirement may be fired in affected units.

(3) **Incinerators.**

(a) For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by ~~((applicable sampling methods or))~~ Ecology Test Method 14. Total carbonyls means the concentration of organic compounds containing the =C=O radical. An applicable EPA reference method or other procedures approved in advance by the Agency ~~((including but not limited to those methods contained in "Source Test Manual~~

~~Procedures for Compliance Testing," State of Washington, Department of Ecology)) may be used to collect and analyze for the same compounds collected in Ecology Test Method 14.~~

(b) Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the Agency.

~~((3)) (4) Measurement correction. Measured concentrations for combustion and incineration units shall be corrected ((in accordance with the following listing. "Source categories" not identified shall have measured concentrations for volumes corrected)) to 7% oxygen, except when the Agency 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. ((Concentrations for the following "source categories" shall normally be corrected to the following oxygen concentrations: gas, diesel, and oil fired boilers: 3%; medical/hospital waste incinerators: 12%; natural gas turbines, asphalt mixers and aggregate dryers: 15%. Concentrations from thermal oxidizers and open/enlosed flares shall be reported as measured.))~~

~~((4)) (5) Commercial and industrial solid waste incineration units constructed on or before November 30, 1999.~~ (See SWCAA 400-115(1) for the requirements for a commercial and industrial solid waste incineration unit constructed after November 30, 1999, or modified or reconstructed after June 1, 2001.)

(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 (4)(c) of this subsection.

(c) Exempted units. 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 CFR 60.2265 (in effect on January 30, ~~(2001)~~ 2015) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting agency 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 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting agency 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 regulated under 40 CFR Part 60, Subpart Ea or Subpart Eb (in effect on July 1, ~~(2000)~~ 2015); 40 CFR Part 60, Subpart AAAA (in effect on June 1, ~~(2001)~~ 2015); or WAC 173-400-050(5).

(B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (in effect on July 1, ~~(2000)~~ 2015), Eb (in effect on July 1, ~~(2000)~~ 2015), and AAAA (in effect on June 1, ~~(2001)~~ 2015), and SWCAA 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 the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

(I) Notify the Agency 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 CFR 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, ~~(2000)~~ 2015);

(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) The owner or operator of the unit has notified the permitting agency 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) The owner or operator of the unit has notified the permitting agency 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 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, ((2002)) 2015).

(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 CFR 60.2245 through 60.2260 (in effect on July 1, ((2002)) 2015).

(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 CFR 60.2265 (in effect on July 1, ((2002)) 2015).

(xi) Rack, part, and drum reclamation units. See 40 CFR 60.2265 (in effect on July 1, ((2002)) 2015).

(xii) Cement kilns. Kilns regulated under Subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, ((2002)) 2015).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, ((2002)) 2015).

(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 CFR 60.2815, in effect on July 1, ((2002)) 2015).

(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 CFR 60.2815 (in effect on July 1, ((2002)) 2015) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on July 1, ((2002)) 2015, which is adopted by reference.

(i) The federal rule contains these major components:

(A) Increments of progress towards compliance in 60.2575 through 60.2630;

(B) Waste management plan requirements in 60.2620 through 60.2630;

(C) Operator training and qualification requirements in 60.2635 through 60.2665;

(D) Emission limitations and operating limits in 60.2670 through 60.2685;

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

(I) Recordkeeping and reporting requirements in 60.2740 through 60.2800;

(J) Title V operating permits requirements in 60.2805;

(K) Air curtain incinerator requirements in 60.2810 through 60.2870;

(L) Definitions in 60.2875; and

(M) 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.

(ii) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the Agency.

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

(iv) 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.

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 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, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

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

(A) The final control plan (Increment 1) must be submitted no later than ~~(January 1, 2004)~~ 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))~~ **(6) Small municipal waste combustion units.** Small Municipal waste combustion units constructed on or before August 30, 1999. (See SWCAA 400-115(1) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(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 (c)(viii) and (ix) of this subsection.

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

(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 permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

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

(C) The owner or operator of the unit sends a copy of the federally enforceable permit to the permitting agency.

(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 agency that the unit qualifies for the exemption.

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

(D) The owner or operator submits documentation to the permitting agency 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 co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

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

(C) The owner or operator submits documentation to the permitting agency 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) Co-fired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit 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 agency that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable permit to the permitting agency.

(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 CFR 60.1940 (in effect on July 1, ((2002)) 2015).

(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, liquefied 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 CFR 60.1910 (in effect on July 1, ((2002)) 2015) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on July 1, ((2002)) 2015).

(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 CFR 60.1940 (in effect on July 1, ((2002)) 2015).

(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 CFR 60.1940 (in effect on July 1, ((2002)) 2015), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (in effect on July 1, ((2002)) 2015).

(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 CFR 60.1940 (in effect on July 1, ((2002)) 2015) 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 CFR 60.1940 (in effect on July 1, ((2002)) 2015) 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 CFR 60.1610 (in effect on July 1, ((2002)) 2015).

(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 CFR 60.1935 (d) and (e) (in effect on July 1, ((2002)) 2015) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, ((2002)) 2015) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on July 1, ((2002)) 2015), 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; and
- (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 SWCAA 400-050(5);
- (B) "You" in the federal rule means the owner or operator;
- (C) "Administrator" includes the permitting agency;
- (D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule; and
- (E) "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 (~~comply with Table 1~~).

<u>((Table 1 Compliance Schedules and Increments of Progress</u>					
<u>Affected units</u>	<u>Increment 1 (Submit final control plan)</u>	<u>Increment 2 (Award contracts)</u>	<u>Increment 3 (Begin on-site construction)</u>	<u>Increment 4 (Complete on-site construction)</u>	<u>Increment 5 (Final compliance)</u>
All Class I units	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005))

(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 CFR 60.1790 (in effect on July 1, ~~((2002))~~ 2015).
- (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 CFR Part 60, Subpart BBBB (in effect on ~~((July 1, 2002))~~ 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 permit or operation permit) if a permit modification is required.
- (i) Air operating permit. Chapter 173-401 WAC, the air operating permit regulation, applicability begins on July 1, 2002. See WAC 173-401-500 for permit application requirements and deadlines.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-060 Emission Standards for General Process Units

General process units shall meet all applicable provisions of SWCAA 400-040, and no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter of exhaust gas at standard conditions (0.1 grain/dscf). EPA test

methods from 40 CFR Parts 51, 60, 61 and 63 as in effect July 1, ~~((2002))~~ 2015 and any other appropriate test procedures approved in advance by both the Agency and EPA shall be used to determine compliance.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-070 General Requirements for Certain Source Categories

~~((The Agency finds that the reasonable regulation of "stationary 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 emission units within the categories listed.))~~

(1) **Wigwam burners.** The use of wigwam ("tee-pee", "conical", or equivalent type) burners is prohibited effective January 1, 1994.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of SWCAA 400-040 and SWCAA 400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any consecutive eight hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary for efficient operation of these units. Soot blowing and grate cleaning is to be scheduled for the same specific times each day. The boiler operator shall maintain a written schedule on file with the Agency, and provide updates as necessary.

(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) **Catalytic cracking units.** All new catalytic cracking units shall install BACT and meet all requirements applicable to a new "stationary source." As of January 1, 2002, there are no existing catalytic cracking units in SWCAA's jurisdiction.

(5) **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 H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(6) Gasoline dispensing facilities.

(a) All gasoline dispensing facilities shall meet all the provisions of SWCAA 491 "Emission Standards and Controls for Sources Emitting Gasoline Vapors."

(b) Methyl tertiary-butyl ether (MTBE) may not be intentionally added to any gasoline, motor fuel, or clean fuel produced for sale or use in the state of Washington after December 31, 2003, and in no event may MTBE be knowingly mixed in gasoline above six-tenths of one percent by volume. [RCW 19.112.100]

(c) Each nozzle from which gasoline is dispensed shall have a maximum fuel flow rate not to exceed 10 gallons per minute. [40 CFR 80.22(j)]

(7) Perchloroethylene dry cleaners.

(a) New installations prohibited. Effective July 1, 2010, the installation of new perchloroethylene dry cleaning systems or reinstallation of existing perchloroethylene dry cleaning systems is prohibited.

(b) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Table 1 divides dry cleaning facilities into 3 source categories by the type of equipment they use and the volume of PCE purchased.

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:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 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 CFR Part 63, Subpart M (in effect on July 1, 2002).

(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 a refrigerated condenser is being used, record the following 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 a carbon adsorber is being used, record the following 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
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.

(e) Inspection.

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

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source
Once every 2 weeks.	Once every week.	Once every week.

(ii) An inspection must include an examination of 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.

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

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

(f) Repair requirements:

(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 2 business days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than 5 business 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 requirements:

(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 requirements:

(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); and

(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 recorded 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 eight stack or duct diameters downstream from a bend, expansion, contraction or outlet.

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

(8) Abrasive blasting.

(a) Abrasive blasting shall be performed inside a fully enclosed booth or structure designed to capture the blast grit, overspray, and removed material, ~~((except that))~~ Outdoor blasting of structures or items too large to be reasonably handled indoors ~~((or in an enclosure))~~ shall employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps. Blasting operations shall comply with the general regulations found in SWCAA 400-040 at all times.

(b) Outdoor blasting shall be performed with either steel shot, wet blasting methods, or an abrasive material containing less than one percent (by mass) of material that would pass through a No. 200 sieve.

~~((c))~~ ~~((All abrasive blasting with sand shall be performed inside a blasting booth, enclosure, or structure designed to capture fugitive particulate matter.~~

~~((d))~~ All abrasive blasting of materials that contain, or have a coating ~~((or))~~ that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance shall be analyzed prior to blast opera-

tions. If a toxic or hazardous material is present in the blast media or removed media, all material shall be handled and disposed of in accordance with applicable regulations.

(9) **Sewage sludge incinerators.** Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) in effect on July 1, ~~((2002))~~ 2015, are adopted by reference.

(10) **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 Resource 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. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR 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 SWCAA 400-115(1) 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 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the Agency.

(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) An 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 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) An 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 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) **Recordkeeping and reporting.** An MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submission of an initial design capacity report) and 40 CFR 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) An 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

CFR 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 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

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

(C) The system must follow the applicable monitoring provisions in 40 CFR 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 a 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 an 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 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the Agency 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 CFR 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 corrected to three percent oxygen or less.

(i) Air operating permit:

(i) An 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 WAC 173-401 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) An 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 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no "source" may operate after the time that it is required to submit a timely and complete application.)

(iii) When an 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 CFR 62.14353; or

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

(11) Used oil burners.

(a) Applicability. The requirements of this section do not apply to:

(i) Facilities operating in accordance with an air discharge permit or other regulatory order issued by the Agency;

(ii) Used oil burned in used oil fired space heaters (40 CFR 279.23) provided that:

(a) The space heater burns only used oil that the owner or operator generates or used oil received from household do-it-yourself used oil generators,

(b) The space heater is designed to have a maximum ~~((capacity))~~ heat output of not more than 0.5 million Btu per hour, and

(c) Combustion gases from the space heater are vented to the ambient air;

(iii) Ocean-going vessels (40 CFR 279.20 (a)(2)); and

(iv) Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles (40 CFR 279.20 (a)(3)).

(b) Requirements. No person shall burn as fuel used oil that exceeds any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;

(iii) Cadmium - 2 ppm maximum;

~~((iii))~~ (iv) Chromium - 10 ppm maximum;

~~((iv))~~ (v) Lead - 100 ppm maximum;

(vi) Polychlorinated biphenyls (PCB's) - 2 ppm maximum;

(vii) Sulfur - 1.0 percent maximum;

~~((vii))~~ (viii) Flash point - 100 °F minimum; and

~~((viii))~~ (ix) Total halogens - ((4,000)) 1,000 ppm maximum. ((Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under 40 CFR 279.10 (b)(1). Such used oil is subject to 40 CFR 266, Subpart H when burned for energy recovery unless the presumption of mixing can be successfully rebutted.)

~~((Note: 40 CFR 761.20(c) imposes standards for the burning of used oil containing polychlorinated biphenyls (PCBs).))~~

(12) Coffee roasters.

~~(a) ((Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch are required to maintain and operate an afterburner that treats all roasting and cooling exhaust streams prior to discharge to the ambient air.~~

~~(b))~~ Applicability. The following equipment is subject to the provisions of SWCAA 400-109 and 400-110:

(i) All batch process coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch;

(ii) Batch process coffee roasters with a capacity of 10 pounds or less of green coffee beans per batch on a case-by-case basis;

(iii) Continuous process coffee roasters regardless of capacity; and

(iv) Coffee roasting processes involving decaffeination regardless of capacity.

(b) Requirements. Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch shall install and operate an afterburner or equivalent control device that treats all roasting and cooling exhaust streams prior to discharge to the ambient air.

(13) Natural gas fired water heaters.

(a) Applicability. The requirements of this section apply to all natural gas fired water heaters with a rated heat input less than 400,000 Btu/hr. For the purposes of this subsection, the term "water heater" means a closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 psig, including the apparatus by which heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210°F.

(b) Requirements.

(i) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 55 ppmv at 3% O₂, dry (0.067 lb per million Btu of heat input).

~~((e))~~ (ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 20 ppmv at 3% O₂, dry ~~((0.067))~~ 0.024 lb per million Btu of heat input).

(14) Rendering plants.

(a) Applicability. The requirements of this section apply to any equipment or process used for the reduction of animal matter. For the purpose of this section, reduction is defined as any heated process (i.e., rendering, cooking, drying, dehydration, digesting, evaporating or protein concentrating). The requirements of this section shall not apply to any equipment or process used exclusively for the processing of food for human consumption.

(b) Requirements. All gases, vapors, and gas-entrained effluents emitted by reduction operations shall be captured and:

(i) Incinerated at temperatures of not less than 1,400 degrees F for a period of not less than 0.5 seconds; or

(ii) Processed in a manner determined by the Agency to be equal to or more effective than the method specified in section (i) above.

(15) Outdoor wood-fired boilers.

(a) Applicability. For the purposes of this subsection, the term "outdoor wood-fired boiler" means an outdoor wood-fired hydronic heater or outdoor wood-fired furnace that is an accessory outdoor structure, designed and intended, through the burning of wood, to heat the principal structure or any other site, building, or structure on the premises. The requirements of this subsection shall apply to units with rated heat inputs of 1,000,000 Btu/hr or less.

(b) No person shall sell, install, or operate an outdoor wood-fired boiler unless the affected unit meets the applicable requirements of WAC 173-433.

(c) Outdoor wood-fired boilers shall only be installed:

(i) For use outside urban growth areas as defined in chapter 36.70A RCW;

(ii) A minimum of fifty feet from the residence it is serving;

(iii) A minimum of two hundred feet from the nearest residence or commercial establishment that is not located on the same property as the outdoor wood-fired boiler; and

(iv) With a minimum chimney height of fifteen feet. If there is a residence that is not located on the same property within five hundred feet of the outdoor wood-fired boiler, the chimney must extend at least as high as the roof height of all such residences.

(d) Outdoor wood-fired boilers shall only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler shall follow manufacturer-recommended fuel loading times and amounts. In no case, shall a boiler be fired on any prohibited fuel cited in WAC 173-433.

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-072 ((Emission Standards)) Small Unit Notification for Selected ((Small)) Source Categories

Purpose. ~~((The Agency has established emission standards and operational requirements for selected small source categories.))~~ The standards and requirements contained in this section are intended to be representative of BACT for the affected source~~((s))~~ categories. Submission of a small unit notification (SUN) pursuant to section 400-072(2) is intended to take the place of an air discharge permit application in regards to approval of new emission units. An air discharge permit application ~~((for criteria and/or toxic air pollutants pursuant to))~~ as described in SWCAA 400-109 is not required for ((an)) an affected emission unit ((that falls within one of the affected source categories, provided)) if the owner or operator submits proper notification to the Agency and maintains compliance with the ~~((monitoring, recordkeeping, testing, and reporting))~~ emission standards and other requirements specified for the applicable source category. ~~((Any~~

~~emission unit that fails to maintain continuing compliance with applicable requirements becomes subject to SWCAA 400-109.)~~ Emission units subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are part of a major stationary source or major modification.

Registration. All emission units (~~(covered by)~~) subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) **Exceptions.**

(a) The owner or operator of an emission unit meeting any of the applicability criteria listed below may voluntarily elect to file an air discharge permit application pursuant to SWCAA 400-109.

(b) ~~If an emission unit ((meeting the applicability criteria listed in any part))~~ subject to the provisions of this section is located at a "stationary source" that is otherwise required to be permitted pursuant to SWCAA 400-109, the Agency may require that the emission unit be included in the permit for the affected "stationary source".

(c) SWCAA may require any emission unit that fails to maintain ongoing compliance with the applicable requirements of this section to submit an air discharge permit application pursuant to SWCAA 400-109.

(2) **Agency notification.** An owner or operator who wishes to install and operate a new emission unit under the provisions of this section must file a formal notification with the Agency for each emission unit. Notification shall be performed using forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected emission unit, establish applicability under this section, and demonstrate compliance with applicable requirements.

~~((Required information))~~ A complete notification includes, but is not limited to, the following:

(a) Location of installation and/or operation;

(b) Identification of responsible party (owner or operator);

(c) Applicable processing fee;

(d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;

(e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);

~~((f))~~ (f) Control equipment specifications;

~~((e))~~ (g) Vendor performance guarantees; and

~~((f))~~ (h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

(3) **Processing fee.** Each notification shall be accompanied by the payment of a processing fee of \$250.00~~((This fee shall be paid))~~ for each piece of equipment subject to notification.

(4) **Effective date.** Emission units subject to the provisions of this section shall not be installed or operated until the Agency provides written confirmation that the affected emission units are capable of complying with applicable requirements.

(5) **Source categories.**

(a) **Coffee roasters.**

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of ~~((10 pounds or greater, but))~~ less than 100 pounds of green coffee beans per batch.

(ii) **Emission limits and standards.**

(A) Visible emissions from the coffee roaster exhaust stack shall not exceed five percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(B) Operations that cause or contribute to odors that could unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce those odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each coffee roaster shall be equipped with an afterburner designed for a minimum residence time of 0.5 seconds, and capable of maintaining an operating temperature of not less than 1,200°F.

(B) Each coffee roaster shall have an operable temperature gauge capable of monitoring afterburner operating temperature on a continual basis.

(C) Each coffee roaster shall be exhausted to the afterburner whenever smoke or odors are generated by roasting and cooling activities.

(D) Afterburners shall be operated whenever the associated coffee roaster is in operation. The afterburner shall be operated and maintained in accordance with the manufacturer's specifications. Furthermore, the afterburner shall be operated in a manner that minimizes emissions.

(E) The exhaust point for each coffee roaster shall be a minimum of 200 feet from the nearest residential structure.

(F) Each coffee roaster and afterburner shall only be fired on natural gas ~~((only))~~ or propane.

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Afterburner operating temperature shall be recorded weekly;

(B) Quantity of coffee roasted shall be recorded weekly;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action shall be recorded ~~((for))~~ promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

~~(B)~~ All air quality related complaints, including odor complaints, received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

~~((B))~~ (C) The owner or operator of an affected coffee roaster shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and afterburner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) **Small gas fired boilers/heaters.**

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale.

(ii) **Emission limits and standards.**

(A) Visible emissions from the boiler exhaust stack shall not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A).

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O₂, dry, 1-hr avg). EPA test methods from 40 CFR 60, as in effect on July 1, 2015, shall be used to determine compliance.

(iii) **General requirements.**

(A) Each boiler/heater shall only be fired on natural gas, propane, or LPG.

~~((B) Boiler/heater exhaust shall be discharged vertically above the roof peak of the building in which the emission unit is housed, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.))~~

(iv) **Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler/heater shall be recorded for each calendar month;

(B) Maintenance activities for the boiler/heater shall be logged for each occurrence;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded ~~((for))~~ promptly after each occurrence.

(v) **Testing requirements.**

(A) Each boiler/heater shall undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring shall be conducted annually thereafter no later than the end of the month in which the original monitoring was conducted. ~~((An alternate monitoring schedule may be implemented, but must be approved by the Agency prior to use.))~~ All emission monitoring shall be conducted in accordance with the requirements of SWCAA 400-106(2).

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂, the owner or operator shall either perform 60 minutes of additional monitoring to more accurately quantify CO and NO_x emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O₂.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

~~(B)~~ All air quality related complaints received by the owner or operator shall be reported to the Agency within 3 business days of receipt.

~~((B))~~ (C) Emission monitoring results for each boiler/heater shall be reported to the Agency within 15 calendar days of completion on forms provided by the Agency.

~~((C))~~ (D) The owner or operator of an affected boiler/heater shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) **Emergency service internal combustion engines.**

(i) **Applicability.** The provisions of this section apply to emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.).

(ii) **Emission limits and standards.**

(A) Visible emissions from diesel fired engine exhaust stacks shall not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation shall not apply during periods of cold start-up.

(iii) **General requirements.**

(A) Liquid fueled engines shall only be fired on #2 diesel or biodiesel. Fuel sulfur content of liquid fuels shall not exceed 0.0015% by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines shall only be fired on natural gas or propane.

(C) Each compression ignition engine shall be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Engine operation shall be limited to maintenance checks, readiness testing, and actual emergency use.

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. ~~((Total engine operation shall not exceed 200 hours per year.))~~ Actual emergency use is unrestricted.

(F) Each engine shall be equipped with a nonresettable hourmeter for the purpose of documenting hours of operation.

(G) Engine exhaust shall be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine shall be recorded annually;

(B) Hours of emergency use for each engine shall be recorded annually;

~~(C)~~ (C) Fuel sulfur certifications shall be recorded for each shipment of liquid fuel;

~~((C))~~ (D) Maintenance activities shall be recorded for each occurrence consistent with the provisions of 40 CFR 60.4214;

~~((D))~~ (E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

~~((E))~~ (F) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded ~~((for))~~ promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within three calendar days of receipt.

~~((B))~~ (C) The owner or operator of an affected emergency engine shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **Petroleum dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use petroleum solvent and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturer's rated dryer capacity is the sum of the manufacturer's rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

(ii) **Emission limits and standards.**

(A) VOC emissions from each dry cleaning facility shall not exceed 1.0 ton per year. Emissions shall be calculated using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid shipped offsite as waste may be deducted from the calculated emissions.

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce these odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each dry cleaning facility shall be operated in a business space zoned for commercial activity, located a minimum of 200 feet from the nearest residential structure.

(B) Dry cleaning machines shall ~~((only))~~ use ~~((approved cleaning fluids. The Agency has approved the use of))~~ DF-2000 cleaning fluid or an equivalent solvent. ~~((Other cleaning fluids may be used upon written approval from the Agency.))~~

(C) Solvent or waste containing solvent shall be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters shall be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks shall be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts shall be ordered within 2 business days of detecting the leak and repair parts shall be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment shall be operated whenever the equipment served by that control device is in operation. Control devices shall be operated and maintained in accordance with the manufacturer's specifications.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Each dry cleaning machine shall be visually inspected at least once per week for perceptible leaks. The results of each inspection shall be recorded in an inspection log and maintained on-site. The inspection shall include, but not be limited to the following:

(I) Hose connections, unions, couplings and valves;

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of shall be recorded monthly.

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded ~~((for))~~ promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee shall be reported to SWCAA within 3 calendar days of receipt.

~~((B))~~ (C) The owner or operator of an affected petroleum dry cleaner shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(e) **Rock crushers and aggregate screens.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens ~~((installed as part of a previously permitted))~~ proposed for installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

The provisions of this section do not apply to internal combustion engines associated with proposed rock crushers or aggregate screens. Such engines are subject to the requirements of SWCAA 400-045 or 400-109, as applicable.

(ii) **Emission limits and standards.**

(A) Visible emissions from rock crushing ~~((equipment))~~ operations shall not exceed 0% opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(iii) **General requirements.**

(A) Each rock crusher and aggregate screen shall be equipped with a high pressure water spray system for the control of fugitive PM emissions. Operating pressure in each spray system shall be maintained at 80 psig or greater. A functional pressure gauge shall be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system shall be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles shall be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul

roads shall be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures shall be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

~~((For portable rock crushing operations, the owner or operator shall notify all property owners immediately adjacent to a new job site a minimum of 10 business days in advance of the intended relocation. Such written notification shall include a complete description of the proposed operation, the emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and contact information for the Agency. Response from adjacent landowners shall be directed to the Agency. Authorized operations are dependent on the receipt of public response regarding the proposed relocation.))~~ Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" shall comply with the applicable requirements of that regulation.

(F) For portable rock crushing operations, the owner or operator shall notify the Agency ~~((at least 10 business days))~~ in advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles shall be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment shall be recorded for each occurrence;

(C) Quantity and size of crushed/screened material shall be recorded monthly;

(D) Relocation of rock crushing equipment shall be recorded for each occurrence.

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded ~~((for))~~ promptly after each occurrence.

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing shall be conducted within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the require-

ments of (~~40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants."~~) that regulation.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

~~((B))~~ (C) The owner or operator of an affected rock crusher or aggregate screen shall report the following information to the Agency no later than March 15th for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO shall be reported to the Agency within 45 calendar days of test completion.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants

(1) The national emission standards for hazardous air pollutants promulgated by EPA as in effect (~~(January 1, 2009))~~ July 1, 2015, as contained in 40 CFR Part 61, are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency. A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(2) The Agency may require that emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, Part 62, Part 63, or Part 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of 40 CFR Part 51, Part 60, Part 61, Part 63 and/or Part 65, as in effect on (~~(January 1, 2009))~~ July 1, 2015.

(4) This section shall not apply to any "stationary source" operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by EPA.

(a) As of (~~(January 1, 2009))~~ July 1, 2015, 40 CFR Part 63 and appendices are hereby adopted by reference. A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(b) Exceptions to 40 CFR Part 63 adoption by reference.

(i) The term "administrator" in 40 CFR Part 63 includes the Executive Director of the Agency.

(ii) The following subparts of 40 CFR Part 63 are not adopted by reference:

(A) Subpart C, List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List;

(B) Subpart E, Approval of State Programs and Delegation of Federal Authorities;

(C) Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities - as it applies to (~~(non-major))~~ non-Title V sources;

(D) Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines - as it applies to non-Title V sources;

(E) Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources - as it applies to non-Title V sources;

(F) Subpart JJJJJ, Industrial, Commercial, and Institutional Boilers Area Sources - as it applies to non-Title V sources; and

~~((F))~~ (G) Subpart XXXXXX, Area Source Standards for Nine Metal Fabrication and Finishing Source Categories - as it applies to non-Title V sources.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** (SOCMI) 40 CFR Part 65, as in effect on (~~(January 1, 2009))~~ July 1, 2015, is adopted by reference.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants

All references to Chapter 173-460 WAC found within SWCAA 400 refer to the version of Chapter 173-460 WAC in effect as of August 21, 1998.

(1) The term toxic air pollutants (TAP) or toxic air contaminant means any air pollutant listed in WAC 173-460-150 or 460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or 460-160. The Chemical Abstract Service (CAS) number shall be the primary means used to specifically identify a substance. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(2) All "stationary sources" subject to the requirements of SWCAA 400-110, 400-111, 400-112, 400-113 or 400-114 shall be subject to the requirements of Chapter 173-460 WAC. All "stationary sources" subject to review under SWCAA 400 shall also be reviewed for applicability and/or compliance under Chapter 173-460.

(3) The review fee schedule provided in SWCAA 400-109 shall be applicable to all "stationary sources" subject to Chapter 173-460 WAC. (~~(The fees identified in SWCAA 400-109 shall not be duplicate to any fees collected under Chapter 173-460 WAC.)~~) Only a single fee shall apply to "stationary sources" that are subject to SWCAA 400 and Chapter 173-460 WAC.

(4) If an air discharge permit application is required under both SWCAA 400 and Chapter 173-460 WAC, then the applications shall be combined. All "stationary sources" subject to Chapter 173-460 WAC shall file an air discharge permit application in accordance with SWCAA 400-109.

(5) Agency actions including issuance of regulatory orders, air discharge permits, and enforcement actions for "stationary sources" subject to Chapter 173-460 WAC shall be the same as those actions for "stationary sources" subject to and identified in SWCAA 400.

(6) "Stationary sources" subject to Chapter 173-460 WAC shall be subject to the registration requirements of SWCAA 400-100. Where a "stationary source" is subject to both SWCAA 400 and Chapter 173-460 WAC, only one registration shall be provided and only one fee shall be collected in accordance with the schedule outlined in SWCAA 400-100.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-081 Startup and Shutdown

(1) In promulgating technology-based emission standards and making control technology determinations (e.g., BACT, RACT, LAER, BART) the Agency shall consider any physical and operational constraints on the ability of a "stationary source" or source category to comply with the applicable technology based standard during startup or shutdown. Where the Agency determines that the "stationary source" or source category, operated and maintained in accordance with good air pollution control practice, is not capable of achieving continuous compliance with a technology based standard during startup or shutdown, the Agency shall include in the technology based standard appropriate emission limitations, operating parameters, or other criteria to regulate the performance of the "stationary source" or source category during startup or shutdown conditions. No provision of this rule section shall be construed to authorize emissions in excess of SIP approved emission standards unless previously approved by EPA as a SIP amendment.

(2) In modeling the emissions of a "stationary source" for purposes of demonstrating attainment or maintenance of national ambient air quality standards, the Agency shall take into account any incremental increase in allowable emissions under startup or shutdown conditions authorized by an emission limitation or other operating parameter adopted under this rule section. The review of a major nonattainment permit must also include a determination of additional emission offsets required for allowable emissions occurring during stationary source startup and shutdown.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-091 Voluntary Limits on Emissions

(1) Voluntary limits on emissions and limitations on potential to emit or process parameters or throughputs may be requested by the owner or operator of any source or "stationary source" by submittal of a complete air discharge permit application as provided in SWCAA 400-109. Confiden-

tial information shall be identified as set forth in SWCAA 400-270. Upon completion of review of the application, the Agency shall issue a regulatory order or air discharge permit limiting that source's or "stationary source's" potential to emit to an amount agreed to by the owner or operator and the Agency.

(2) A condition contained in an order or air discharge permit issued under this section shall limit operation to a level less than the "stationary source's" otherwise allowable annual emissions of that air contaminant, process parameters or throughputs under all applicable requirements of Chapter 70.94 RCW and the Federal Clean Air Act, including any standard or other requirement provided for in the Washington SIP.

(3) Any regulatory order or air discharge permit issued under this section shall include monitoring, recordkeeping and reporting requirements sufficient to ensure that the source or "stationary source" complies with any emission limit, process parameter, or throughput limitation established under this section. Monitoring requirements shall use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of SWCAA 400-105.

(4) Any regulatory order or air discharge permit issued under this section shall be subject to the requirements of SWCAA 400-171.

(5) The terms and conditions of a ~~(a)~~ regulatory order or air discharge permit issued under this section shall be federally enforceable, upon approval of this section as an element of the Washington SIP. Any proposed change in a term or condition contained in an order or air discharge permit issued under this section shall require revision or revocation of the order or air discharge permit prior to taking effect.

(6) Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or air discharge permit issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 05-23-066 filed 11/15/05, effective 12/16/05)

SWCAA 400-099 Per Capita Fees

Each component city or town and county shall pay such proportion of the supplemental income to the Agency as determined by either one of two methods as provided under RCW 70.94.093. The first method is based on the assessed valuation of property within such city or town and county limits bears to the total assessed valuation of taxable property within the jurisdiction of SWCAA. The second method is based on the total population of such city or town and county bears to the total population of the jurisdiction of SWCAA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWCAA Board of Directors has elected to use the second method based on population (per capita). The population shall be determined by the most recent State of Washington Office of Financial Management (OFM) population estimate. The "per capita" assessment has been established at the following rates:

<i>Assessment Rate</i>	<i>Effective Date</i>
(\$0.30 per citizen	April 11, 1999
\$0.31 per citizen	January 1, 2006
\$0.32 per citizen	January 1, 2007
\$0.33 per citizen	January 1, 2008

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-100 Registration Requirements

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or emission units shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151. A "source" or emission unit is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. Emission units that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

Registration requirements are not applicable to ((except)) the following:

- (a) Emission units or activities exempted under SWCAA 400-101; and
- (b) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

Regardless of the exemptions provided above, gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and all dry cleaners with VOC or TAP emissions shall be registered.

(2) General requirements.

(a) The owner or operator of a "source" for which registration is required shall initially register ~~((the "source"))~~ affected emission units with the Agency. A unique identification number shall be assigned to each "source" and a separate registration fee shall be provided for each emission unit; provided that, an owner ~~((has the option))~~ may request to register a process with a detailed inventory of air contaminant sources and emissions related to the process as a single unit. A registration fee shall not be collected for exempt emission units identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the

accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee shall be paid before the Agency may register any emission unit. Annual registration fees are based on the number of registered emission units and the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or emission units that permanently shut-down prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the following schedule:

<i>Emission Unit Fee</i>	<i>Pollution Emission Fee</i>	<i>Effective Date</i>
\$90 per emission unit	\$45/ton of criteria pollutant <u>or VOC</u> emission	January 1, 2008
	\$25/ton of toxic air pollutant emission	

Exceptions:

- (a) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.
- (b) The registration fee for a small operation may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.
- (c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Pursuant to RCW 70.94.431(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an emission unit are delinquent for two consecutive years or more, the Agency may revoke the affected emission unit's air discharge permit or Order of Approval.

(5) Reporting requirements for transfer or permanent shutdown of registered ~~((sources))~~ emission units.

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of ~~((a))~~ registered ~~((source))~~ emission units to the Agency within 90 calendar days of shutdown or transfer. The report shall contain the following information:

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected emission units; and

(iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of ((a)) registered ((~~"source"~~)) emission units shall file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

(i) Legal name of the company or individual involved in the transfer;

(ii) Effective date of the transfer;

(iii) Description of the affected emission units; and

(iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) Inspections.

(a) Periodic onsite inspections of emission units and "sources" shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70.94.200.

(b) Agency personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person shall obstruct, hamper or interfere with any such inspection.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-101 Emission Units Exempt from Registration Requirements

(1) **Applicability.** The emission units listed in subsection (4) of this section are exempt from the registration requirements of SWCAA 400-100. If an exempt emission unit is located at a "stationary source" that is otherwise required to be registered, the Agency may require that the exempt emission unit be included in the "stationary source" registration. If an exempt emission unit is located at a Title V facility, it must be included in the facility's Title V permit in accordance with Chapter 173-401 WAC. The owner or operator of any emission unit exempted from registration under this section shall maintain documentation sufficient to verify that the emission unit is entitled to exemption under this section.

An exemption from new source review pursuant to SWCAA 400-109 shall not be construed as an exemption from registration under this section.

(2) Wherever a "stationary source" has multiple emission units, which are similar in function and purpose, exemption status shall be determined based on aggregate capacity (e.g., horsepower, Btu per hour, airflow, etc.) or the aggregate emissions of similar emission units.

(3) **Exempt emission thresholds.** A "stationary source" shall be exempt from registration if the uncontrolled potential to emit from all emission units at that site or facility is less than all of the applicable emission thresholds listed below. To qualify for an emission threshold exemption, the owner or operator shall submit to the Agency a summary of all activities/equipment that emit air pollutants, and calculate potential emissions from the facility based on maximum levels of production/operation. The Agency shall review and validate the submitted documentation prior to granting an exemption.

<i>Pollutant</i>	<i>Exemption Threshold</i>
Criteria pollutants and VOC	1.0 tpy, combined
Lead	0.005 tpy (10 lb/yr)
Ozone depleting substances	1.0 tpy, combined (as defined in SWCAA 400-030)
Toxic air pollutants	1.0 tpy (combined) or less than applicable SQER per Chapter 173-460 WAC, whichever is less.

(4) Exempt equipment and activities.

(a) Asphalt roofing and application equipment (not manufacturing or storage equipment).

(b) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families.

(c) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes.

(d) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents.

(e) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business.

(f) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment).

(g) Retail paint sales establishments (not including manufacturing).

(h) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.

(i) Sewing equipment.

(j) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other structures provided operations are in compliance with the provisions of SWCAA 400-070(8).

(k) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-101(3). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses that do not exceed the

emission thresholds specified in SWCAA 400-101(3). This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations.

(l) Residential wood heaters (e.g., fireplaces and woodstoves).

(m) Office equipment, operations and supplies.

(n) Internal combustion engines used for emergency service that have an individual power rating of less than 50 horsepower.

(o) Internal combustion engines used for emergency service that are located at a facility with a maximum aggregate power rating less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered.

~~((+))~~ (p) Steam cleaning equipment used exclusively for that purpose.

~~((+))~~ (q) Refrigeration systems that are not in air pollution control service.

~~((+))~~ (r) Housekeeping activities and equipment.

~~((+))~~ (s) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.

~~((+))~~ (t) Natural and forced air vents and stacks for bathroom/toilet facilities.

~~((+))~~ (u) Personal care activities.

~~((+))~~ (v) Lawn and landscaping activities.

~~((+))~~ (w) Flares used to indicate danger to the public.

~~((+))~~ (x) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425 and SWCAA 476.

~~((+))~~ (y) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-103 Operating Permit Fees

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW 70.94.161, shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

(a) A volatile organic compound.

(b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard (NAAQS) has been promulgated except that carbon monoxide shall be excluded from this reference. PM₁₀ emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "stationary source." Emission test data is required to

demonstrate the PM₁₀ portion of total particulate matter emissions.

~~((+))~~ Fugitive pollutant emissions shall be included in determining the fee assessment for a "stationary source." Emissions of each ~~((regulated))~~ fee applicable pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW 70.94.162, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment methodology as described below:

(a) **Participation Fee.** Fees sufficient to cover one-third of the Board approved Operating Permit Program budget shall be assessed such that each "stationary source" shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

PF=B÷3÷n, where;

- PF = Participation fee portion of total fee
- B = The total Agency budget for the Operating Permit Program
- n = The number of 40 CFR Part 70 sources

(b) **Emissions Fee.** Fees sufficient to cover one-third of the budget shall be assessed such that each "stationary source" shall pay an amount equal to that "stationary source's" portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The emissions portion of the fee shall be assessed according to the following formula:

EF = B÷3*SE÷TE, where:

- EF = Emissions fee portion of total fee
- B = The total Agency budget for the Operating Permit Program

- SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 "stationary source" (not to exceed 7,500 tons per pollutant)
- TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 "stationary sources"

(c) Complexity Fee. Fees sufficient to cover one-third of the budget shall be assessed such that each 40 CFR Part 70 "stationary source" shall pay an amount equal to that "stationary source's" portion of the total emission units at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" emission units to the total number of emission units located at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The complexity portion of the fee shall be assessed according to the following formula:

$CF = B \div 3 * SU \div TU$, where:

- CF = Complexity fee portion of total fee
- B = The total Agency budget for the Operating Permit Program
- SU = The number of emission units at a "stationary source"
- TU = The number of emission units at all 40 CFR Part 70 "stationary sources"

(d) Total Fee. The amount of the annual assessed fees for each 40 CFR Part 70 "stationary source" shall be the sum of the participation, emissions and complexity fee portions ($PF + EF + CF = \text{Total Fee}$). The sum of the total fees for all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.

(5) Accountability.

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the

Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(6) Fee eligible activities.

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(7) Activities not eligible for fee.

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) **Schedules of payment.** Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) **Late fee payments.** Delinquent fees are subject to a late fee equal to three times the operating permit fee as provided under RCW 70.94.431(7). The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) **Transfer of ownership.** Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "source" shall maintain records of 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, operating limitations, and control measures. "Sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "sources" shall submit an inventory of emissions from the "source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter, PM₁₀, PM_{2.5}, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. 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.

(a) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Large "sources." At a minimum, "sources" satisfying the criteria of 40 CFR 51, Subpart ((Q)) A will be submitted to EPA by the Agency for inclusion in the national emission database. Upon request, the "sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. ((Upon written request,)) An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected source makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(c) Greenhouse gases. The Agency may require that "sources" submit an inventory of greenhouse gas emissions. Affected "sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency 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 Executive Director or an authorized representative may require any "source" under the jurisdiction of the Agency to conduct stack and/or ambient air monitoring and to report the results to the Agency.

(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 the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" 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 the Agency 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) Fluidized 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 SWCAA 400-105 (4)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4)(d) shall be subject to approval by the Agency.

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on ((January 1, 2009)) July 1, 2015), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (SWCAA 400-105(4)) does not apply to any "stationary source" pollutant emission that is:

(i) ~~((Subject to a New Source Performance Standard (NSPS). NSPS "stationary sources" shall be governed by~~

~~SWCAA 400-115.)) Required to be continuously monitored due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63 or 75.~~

~~(ii) Not subject to an applicable emission standard.~~

~~((h) Monitoring system malfunctions. A "source" may be temporarily exempted from the monitoring and reporting requirements of this section during periods of monitoring system malfunctions provided that the owner(s) or operator(s) shows to the satisfaction of the Agency that the malfunction was unavoidable and is being repaired as expeditiously as practicable as provided under SWCAA 400-107.))~~

~~(5) ((Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program. Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWCAA 400-105(1) shall require the submittal of sufficient information to the Agency to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Agency may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.~~

~~(6)) Misrepresentation. 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)) (6) Tampering. 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.~~

~~(7) Requirements for Continuous Emission Monitoring Systems. The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:~~

~~(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR 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 CFR Part 60 in effect on July 1, 2015, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.~~

~~(b) Data Availability. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments, continuous monitoring systems shall be in operation whenever the associated generating equipment is in 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.~~

(c) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the associated generating equipment is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates 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.

(d) Data Recording. 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, permit, or regulation. 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.

(e) Data Retention. 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) Data Reporting. The owner or operator shall submit a report to SWCAA within thirty days after the end of each month in which data were recorded or as otherwise directed by the terms of the applicable air discharge permit, PSD permit, or regulation. The report required by this section may be combined with an excess emission report required by SWCAA 400-107. The report shall include the following information:

(i) The number of hours that the monitored emission unit operated during the month and the number of valid hours of monitoring data that the monitoring system recovered during the month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of section (c) above 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 associated generating equipment 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.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

(1) Emission testing requirements.

(a) Requirement to test. The Agency may conduct or require that emission testing be conducted of any "source" or emission unit within the jurisdiction of the Agency to deter-

mine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions.

(b) Test methods. Any required emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on January 1, (~~2009~~) 2015), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

(c) Accommodations for sampling. The operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an emission unit. The Agency shall be allowed to obtain a sample from any emission unit. The operator of the "source" shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) Notification/test plan submission. The owner or operator of a "source" shall submit a test plan to the Agency in writing at least 10 business days prior to any required emissions test or as otherwise approved by the Agency. Agency personnel shall be informed at least 3 business days prior to testing so that they have an opportunity to be present during testing.

(e) Test duration. A minimum of 3 test runs, at least 1 hour in length, shall be performed at maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The results of the individual test runs shall be averaged together for the purpose of demonstrating compliance with applicable emission limits.

(f) Test records. A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emissions testing to correlate operations with emissions and shall be recorded in the final test report.

(g) Test reports. Results of all required emission testing shall be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable air discharge permit. Test reports shall be submitted in both printed and electronic formats. Measured concentrations for combustion and incineration emission units shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The Agency may reject test reports that do not contain the information listed below, and require resubmittal of a complete report. ((The)) Test reports shall include the following information:

(i) A description of the emission unit including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or test locations;

(ii) Time and date of the test and identification and qualifications of the personnel involved;

(iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit, or as specified in the applicable air discharge permit.

Where applicable, results shall be reported both as measured and as corrected to the appropriate oxygen correction;

(iv) A summary of control system or equipment operating conditions;

(v) A summary of production related parameters;

(vi) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation;

(vii) A description of the analytical procedures used including all laboratory data; quality assurance/quality control procedures and documentation;

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

(xi) Discussion of any abnormalities associated with the results; and

(xii) A statement signed by the senior management official of the testing firm certifying the validity of the emission test report.

(2) Emission monitoring requirements for combustion sources.

(a) **Requirement to monitor.** The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) **Monitoring method.** Emission monitoring may be performed with a portable analyzer or EPA reference methods. Alternative methodologies (~~must be preapproved by~~) may be used if approved by both EPA and SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration shall be determined before sampling commences and after sampling has concluded. These "calibration error" measurements shall be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure shall include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling shall not be valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations shall be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

(c) **Accommodations for sampling.** The owner or operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform monitoring of an emission unit.

(d) **Data collection.** Emission data shall be collected for at least five minutes following a "ramp-up" phase. The "ramp-up" phase ends when analyzer readings have stabilized (less than five percent per minute change in emission concentration value). Emission concentrations shall be recorded every 30 seconds during data collection. All emis-

sion data collected following the ramp-up phase(s) shall be reported to the Agency.

(e) **Monitoring records.** A complete record of production related parameters shall be kept during emission monitoring to correlate operations with emissions and shall be recorded in the final monitoring report. Typical production parameters include, but are not limited to, startups, shutdowns, unit load, fuel flow, operating temperature, etc.

(f) **Monitoring reports.** Results of all required emission monitoring shall be submitted to the Agency within 15 calendar days of completion or as specified in the applicable regulatory order or air discharge permit. Results shall be submitted on forms provided by the Agency or in an alternative format approved by the Agency. The report shall include the following information:

(i) A description of the emission unit including manufacturer, model number and facility designation;

(ii) Time and date of the emission monitoring;

(iii) Identification of the personnel involved;

(iv) A summary of results, reported in units consistent with the applicable emission standard or limit;

(v) A summary of control system or equipment operating conditions, including firing rate at time of monitoring;

(vi) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation; and

(vii) Calibration error check documentation.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-107 Excess Emissions

(1) **Excess emission recordkeeping and reporting.** Excess emissions shall be reported to SWCAA as follows:

(a) Excess emissions that represent a potential threat to human health or safety shall be reported as soon as possible, but no later than 12 hours after discovery.

(b) Excess emissions which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery.

(c) All other excess emissions shall be reported within 30 calendar days after the end of the month during which the event is discovered, or for Air Operating Permit sources, as provided in WAC 173-401-615.

(d) Excess emission reports shall contain the following information:

(i) Identification of the emission unit(s) involved;

(ii) A brief description of the event including identification of known causes;

(iii) Date, time and duration of the event; ((and))

(iv) ~~((Anticipated corrective action to prevent or minimize excess emissions, if any))~~ For exceedances of non-opacity emission limitations, an estimate of the quantity of excess emissions;

(v) Corrective action taken in response to the event; and

(vi) Preventive measures taken or planned to minimize future recurrence.

(e) For any excess emissions the owner or operator wishes to be considered as unavoidable, the excess emission

report must include the following information in addition to that listed in subsection (d) above:

(i) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(ii) Information on whether installed emissions monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(iii) All additional information required by section (2) below supporting the claim that the excess emissions were unavoidable.

~~(Upon request by the Agency, the owner(s) or operator(s) of the "source" shall submit a full written report describing the known causes, the corrective actions taken, and the preventive measures implemented to minimize or eliminate the chance of recurrence.)~~

(2) ~~((Penalty exclusion for))~~ **Unavoidable excess emissions.** Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute. Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority. In a federal enforcement action filed under 42 USC 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (c), (d), and (e) below.

(a) **Burden of proof.** The owner or operator of a "source" shall have the burden of proving to the Agency or ~~((the Pollution Control Hearings Board))~~ decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under this section.

~~(b) (Excess emissions determined by the Agency to be unavoidable under the procedures and criteria in this section shall be excused from penalty.)~~ **Applicability.** This section does not apply to excess emissions that:

(i) Cause a monitored exceedance of any relevant ambient air quality standard;

(ii) Exceed emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal standards; and

(iii) Exceed emission limits and standards contained in a PSD permit issued solely by EPA.

(c) **Startup or shutdown.** Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the "source" reports as required under ~~((sub))~~section (1) ~~((of this section))~~ and adequately demonstrates that ~~((the))~~:

(i) Excess emissions could not have been prevented through careful planning and design~~((;))~~;

(ii) Startup or shutdown was done as expeditiously as practicable;

(iii) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(iv) The emissions were minimized consistent with safety and good air pollution control practice during the startup or shutdown period;

~~(v) ((and))~~ If a bypass of control equipment occurs, that such bypass ~~((is))~~ was necessary to prevent loss of life, personal injury, or severe property damage; and

(vi) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under section (e) below.

(d) **Maintenance.** Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under ~~((sub))~~section (1) ~~((of this section))~~ and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(e) **Upsets or malfunctions.** Excess emissions due to upsets or equipment malfunctions shall be considered unavoidable provided the "source" reports as required under ~~((sub))~~section (1) ~~((of this section))~~ and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iii) The operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; ~~((and))~~

~~(iv) ((The owner's or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.))~~ All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage; and

(v) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

(2) Applicability.

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consis-

tent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

- (i) New construction or installation;
- (ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);
- (iii) Review of existing or installed equipment operating without prior approval;
- (iv) Modification, alteration or replacement of existing process or control equipment;
- (v) Relocation of existing equipment;
- (vi) Review of existing equipment with an expired or lapsed approval or registration;
- (vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT BART, LAER).

(b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.

(c) ~~((("))~~Stationary sources~~((("))~~ subject to the PSD program (WAC 173-400-700 through -750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, shall include all information necessary to meet the requirements of SWCAA 400-800 through -860.

(e) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected emission units and quantify potential emissions, and the payment of a fee equal to \$300. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate of \$70/hr. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

- Name and location of "stationary source";
- Description of primary processes at the "stationary source";
- Description of emission units at the "stationary source";
- and
- Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application shall be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and ~~((proper notification has been submitted to))~~ SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or emission unit may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas in any new air discharge permit.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all emission units at the affected site or facility are less than all of the following exemption emission thresholds.

<i>Pollutant</i>	<i>Exemption Threshold</i>
((Criteria pollutants (other than PM_{2.5})))	
<u>NO_x, CO, SO₂</u>	1.0 tpy (individual pollutant)
<u>PM₁₀</u>	<u>0.75 tpy</u>
PM _{2.5}	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	<u>The lesser of 1.0 tpy (combined) or ((below)) the individual SQR per ((Chapter)) WAC 173-460 ((WAC, whichever is less.)) <u>(effective 8/21/98)</u></u>

~~((e))~~ (e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

(A) Relocation of a portable (~~(equipment)~~) source that has an active air discharge permit from SWCAA allowing portable operation,

(B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Emergency service internal combustion engines (~~(manufactured after January 1, 2008 and individually rated at less than 200 horsepower. This exemption does not apply if the)~~) located at a facility where the aggregate power rating of all internal combustion engines ((at the affected facility is greater than 500)) is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered.

(E) Asphalt roofing and application equipment (not manufacturing or storage equipment),

(F) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

(G) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

(H) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats.

(I) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

(J) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

(K) Retail paint sales establishments (not including manufacturing),

(L) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

(M) Sewing equipment,

(N) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

(O) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(c). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

(P) Residential wood heaters (e.g., fireplaces and woodstoves),

(Q) Office equipment, operations and supplies,

(R) Steam cleaning equipment used exclusively for that purpose,

(S) Refrigeration systems that are not in air pollution control service,

(T) Housekeeping activities and equipment,

(U) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

(V) Natural and forced air vents and stacks for bathroom/toilet facilities,

(W) Personal care activities,

(X) Lawn and landscaping activities,

(Y) Flares used to indicate danger to the public,

(Z) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425, (~~and~~)

(AA) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question, and

(AB) Emergency service internal combustion engines individually rated at less than 50 horsepower.

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant shall submit all applicable fees as detailed in the following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee/Table A + Additional Review Fee/Table B (if applicable) + Major NSR Review Fee/Table C (if applicable)]

Filing Fee

A filing fee of \$500.00 shall be submitted for each permit application.

Legal Notice Fee

An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal Notice pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus \$70 to compensate for the staff time required to prepare, mail and invoice the public notice.

Permit Application Review Fee

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will

be invoiced for each additional work hour at the rate of \$70.00 per hour.

Expedited Application Review

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent

on the accuracy/completeness of the application and the responsiveness of the applicant.

Additional/Major NSR Review Fees

If additional (~~(types of review)~~) actions, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay (~~(an)~~) additional (~~(review)~~) fees as specified in those Tables. The (~~(review)~~) fees identified in Tables B and C are cumulative. If the staff time required to complete the additional review exceeds the number of work hours associated with the applicable review fee specified in Tables B and C, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

**TABLE A
Permit Application Review Fees**

	Equipment/Activity	Associated Work Hours	Review Fee
i.	Fuel burning equipment (Million Btu/hr heat input @ design capacity):		
	0.4 or more but less than 5	8	\$ 600.00
	5 or more but less than 10	10	700.00
	10 or more but less than 30	12	850.00
	30 or more but less than 50	14	1,000.00
	50 or more but less than 100	17	1,200.00
	100 or more but less than 250	35	2,500.00
	250 or more but less than 500	57	4,000.00
	500 or more	85	6,000.00
	Change in fuel type	One half of the applicable fee listed above	
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM):		
	Less than 50	8	\$ 600.00
	50 or more but less than 5,000	10	700.00
	5,000 or more but less than 20,000	11	800.00
	20,000 or more but less than 50,000	12	900.00
	50,000 or more but less than 100,000	13	950.00
	100,000 or more but less than 250,000	14	1,000.00
	250,000 or more but less than 500,000	28	2,000.00
	500,000 or more	57	4,000.00
iii.	Refuse burning equipment (Incinerators) (Tons/day capacity):		
	Less than 0.5	10	\$ 700.00
	0.5 or more but less than 5	11	800.00
	5 or more but less than 12	14	1,000.00
	12 or more but less than 50	42	3,000.00
	50 or more	85	6,000.00
iv.	Storage tanks, reservoirs, or containers (Gallons-total capacity): (Other than gasoline or diesel fuel dispensing facilities):		
	250 or more but less than 10,000	8	\$ 600.00

	Equipment/Activity	Associated Work Hours	Review Fee
	10,000 or more but less than 40,000	14	1,000.00
	40,000 or more but less than 100,000	21	1,500.00
	100,000 or more	28	2,000.00
v.	Gasoline dispensing facilities:		
	Stage I	8	\$ 600.00
	Stage II	10	700.00
	Stages I & II, combined	11	800.00
	Toxics review for gasoline facility	21	1,500.00
	Stage II removal	8	600.00
vi.	Other: (Not classified in Subsection i., ii., iii., iv. or v. above)	\$200.00 per ton of emission	
vii.	Toxic air contaminants	\$200.00 per ton of emission	
viii.	Complex stationary source or modification:	85	\$ 6,000.00
ix.	Synthetic minor application: (Including, but not limited to: Title V, HAP)	35	\$ 2,500.00
x.	Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):		
	Less than or equal to 10	8	\$ 600.00
	More than 10 but less than or equal to 50	14	1,000.00
	More than 50 but less than or equal to 100	21	1,500.00
	More than 100 but less than 250	35	2,500.00
	250 or greater	85	6,000.00
xi.	Minor modifications to existing permit conditions:	8	\$ 600.00
xii.	Dry cleaner:	8	\$ 600.00
xiii.	Internal combustion engines (Aggregate horsepower rating):		
	Less than 500	10	700.00
	500 or more but less than 2,000	14	1,000.00
	2,000 or more but less than 5,000	21	1,500.00
	5,000 or more but less than 10,000	42	3,000.00
	10,000 or more	85	6,000.00
xiv.	Crematory/small incinerators/small flares:	10	\$ 700.00
xv.	Gluing/flow coating operations without active ventilation:		

	Equipment/Activity	Associated Work Hours	Review Fee
		11	\$ 800.00
xvi.	Soil/groundwater remediation:	11	\$ 800.00
xvii.	Composting facilities (Average material throughput - tons per day):		
	Less than 50	8	\$ 600.00
	50 or more but less than 100	14	1,000.00
	100 or more but less than 200	21	1,500.00
	200 or more but less than 500	42	3,000.00
	500 or more	85	6,000.00
xviii.	Coffee roasters:	10	\$ 700.00
xix.	Municipal wastewater treatment plants: (Million gallons per day - annual average design capacity)		
	More than 1 but less than 5	11	\$ 800.00
	5 or more but less than 10	21	1,500.00
	10 or more	35	2,500.00

TABLE B
Additional ((Review)) Fees

	Equipment/Activity	Associated Work Hours	((Review)) Fee
xx.	Emission offset analysis or bubble:	10	\$ 700.00
xxi.	Emission reduction credit (ERC) application: (Deposit or withdrawal)	10	\$ 700.00
xxii.	((State environmental policy act (SEPA) lead agency:		
	Minor	14	\$ 1,000.00
	Major	35	2,500.00
xxiii.	Environmental impact statement (EIS) review:		
	Minor	11	\$ 800.00
	Major	28	2,000.00
xxiv.)	RACT/BACT/MACT/BART/LAER determination:		\$ 70.00/hr
((xxv.)) <u>(xxiii.)</u>	Variance request:	11	\$ 800.00
((xxvi.)) <u>(xxiv.)</u>	Review of ambient impact analysis:		\$ 70.00/hr
((xxvii.)) <u>(xxv.)</u>	Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		\$ 70.00/hr

TABLE C
Major NSR (~~Review~~) Fees

Equipment/Activity	Associated Work Hours	(Review) Fee
(xxviii.) <u>(xxvi.)</u> Plantwide applicability limitations:	142	\$ 10,000.00

(5) ~~(Agency actions)~~ Final determination.

(a) Each complete air discharge permit application shall result in the issuance of (an air discharge permit or other applicable order) a final determination consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. ~~(Demonstration of completion of an)~~ Air discharge permit applications for actions that are subject to SEPA review shall include a completed environmental checklist as provided in WAC 197-11 ~~(shall be submitted with each air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit)~~ or a copy of ~~(that)~~ another agency's SEPA determination for the same action. ~~(Issuance of air discharge permits or regulatory orders for all air discharge permit applications shall be consistent with the requirements of SWCAA 400-110.)~~ A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) Withdrawn or exempt applications.

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

(1) Applicability.

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 shall be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification shall be limited to the emission unit(s) proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113, 400-800 through -860, and/or WAC 173-400-~~(720)~~ 700 through -750.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-109(3). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section; ~~(and)~~

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046; and

(iii) Portable stationary sources subject to the provisions of SWCAA 400-036.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC (as in effect 8/21/98), not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate specified in WAC 173-460-150. The material change may not cause an existing emission limit to be exceeded.

(2) Application completeness determination. Within 30 calendar days of receipt of an air discharge permit application, the Agency 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 as provided under RCW 70.94.152.

(a) Each application shall provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification. The application shall identify the location, design, construction, and operation the new source as necessary to enable the Agency to determine that the new source will meet applicable requirements.

(b) An application for a new major stationary source or major modification shall provide all information required for review pursuant to WAC 173-400-700 through -750 or SWCAA 400-800 through -860, as applicable.

(c) An application for a source subject to the Special Protection requirements for federal Class I areas in WAC 173-400-117(2) shall include all information required for review of the project under WAC 173-400-117(3).

(d) A completed SEPA checklist or relevant SEPA determination for the proposed action shall be submitted with each application, as provided in WAC 197-11. If a proposed action is exempt from SEPA, sufficient documentation shall be provided to confirm its exempt status.

(3) Requirements.

(a) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any "new source," new emission unit, or modification.

(b) ~~((Regardless of any other provision of this section or 400-109,))~~ All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any ~~((of the following:~~

~~(i) Any project that qualifies as a new major stationary source, or a major modification; or~~

~~(ii) Any~~) modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS and applicable ambient air quality standards ~~((See Table A below). A completed SEPA checklist or determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.))~~ Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. If the ambient impact of a proposed project could potentially exceed an applicable ambient air increment, the Agency may require that the applicant demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on ~~((January 1, 2009))~~ July 1, 2015). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

~~((TABLE A – Emission Concentration Regulatory Standards~~

Pollutant	Averaging Period	Ambient Air Increment <i>40 CFR 51.166(e)</i>		National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i>		State Ambient Air Quality Standards <i>173-170, 174, and 175 WAC</i>
		Class I µg/m ³	Class II µg/m ³	Primary Standard µg/m ³ (ppm)	Secondary Standard µg/m ³ (ppm)	Ambient Standard µg/m ³ (ppm)
Carbon Monoxide (CO)	8-Hour	-	-	10,000 ^b (9.0)	-	10,000 ^b (9.0)
	1-Hour	-	-	40,000 ^b (35.0)	-	40,000 ^b (35.0)
Nitrogen Dioxide (NO ₂)	Annual ^a (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O ₃)	1-Hour ^e	-	-	(0.12)	(0.12)	(0.12)
	8-Hour ^f	-	-	(0.075)	(0.075)	-
Sulfur Dioxide (SO ₂)	Annual ^a	2	20	80 (0.03)	-	53 (0.02)
	24-Hour	5	94	365 ^b (0.14)	-	260 ^b (0.10)
	3-Hour	25	512	-	1,300 ^b (0.50)	-
	1-Hour	-	-	-	-	1,065 ^b (0.40)
Lead	Quarterly Average	-	-	1.5	1.5	1.5
Particulate Matter less than 10 µm (PM ₁₀)	Annual (arithmetic mean)	4	17	-	-	50
	24-Hour ^g	8	30	150 ^b	150 ^b	150 ^b
Particulate Matter less than 2.5 µm (PM _{2.5})	Annual ^h (arithmetic mean)	-	-	15	15	-
	24-Hour ^h	-	-	35	35	-

Pollutant	Averaging Period	Ambient Air Increment <i>40 CFR 51.166(e)</i>		National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i>		State Ambient Air Quality Standards <i>173-170, 174, and 175 WAC</i>
		Class I $\mu\text{g}/\text{m}^3$	Class II $\mu\text{g}/\text{m}^3$	Primary Standard $\mu\text{g}/\text{m}^3$ (ppm)	Secondary Standard $\mu\text{g}/\text{m}^3$ (ppm)	Ambient Standard $\mu\text{g}/\text{m}^3$ (ppm)
<p>$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter; ppm = parts per million</p> <p>a Never to be exceeded.</p> <p>b Not to be exceeded more than once per year.</p> <p>c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.</p> <p>d Also, 0.25 ppm not to be exceeded more than twice in seven days.</p> <p>e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.</p> <p>f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.</p> <p>g Based on the 3-year average of annual arithmetic mean $\text{PM}_{2.5}$ concentrations.</p> <p>h Based on the 3-year average of the 98th percentile of 24-hour $\text{PM}_{2.5}$ concentrations at each monitor within an area.</p> <p>i Based on the 99th percentile of 24-hour PM_{10} concentrations at each monitor.</p> <p>Annual standards never to be exceeded; short term standards not to be exceeded more than once per year unless otherwise noted. Sources include the EPA New Source Review Workshop Manual, 40 CFR 52.21 and individual WAC Chapters.)</p>						

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" that meet the applicability criteria of WAC 173-400-720 shall demonstrate that all applicable requirements of ((SWCAA 400-141 and)) WAC 173-400-700 through 750 have been met.

(e) Air discharge permit applications for "major stationary sources" or "major modifications" that are located within a designated nonattainment area and meet the applicability criteria of SWCAA 400-820 shall demonstrate that all applicable requirements of SWCAA 400-800 through -860 have been met.

(f) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager and EPA.

~~((3) Application completeness determination. Within 30 calendar days of receipt of an air discharge permit application, the Agency 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 as provided under RCW 70.94.152.~~

~~(a) For an application subject to PSD review under WAC 173-400-700, a completeness determination includes a determination that the application provides all information required to conduct PSD review.~~

~~(b) For an application subject to Special Protection requirements for federal Class I areas in 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).))~~

(4) Final determination.

(a) Within 60 calendar days of receipt of a complete application, the Agency shall either issue a final decision ((~~or~~)) approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. The Agency will promptly mail copies of each order approving or denying an air discharge permit applica-

tion to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the application required by this section. An application designated for integrated review shall be processed in accordance with Chapter 173-401 WAC procedures and deadlines and must comply with SWCAA 400-171. A PSD permit application ((under)) subject to WAC 173-400-700 through -750 shall comply with the public process requirements of those sections. ((or an air discharge permit application for a "major modification" or a "major stationary source" in a nonattainment area must also comply with SWCAA 400-171 and WAC 173-400-171, as applicable)).

(b) An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

~~((b))~~ (c) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

~~((e))~~ (d) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall 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 Agency.

~~((d))~~ (e) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, the Agency shall submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

(f) If SWCAA is the lead SEPA agency for the proposed action and mitigation measures are required as a result of the SEPA review, applicable mitigation measures shall be included in the final determination.

(5) **Appeals.** An air discharge permit, any conditions contained in an air discharge permit, the denial of an air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. ~~((The Agency shall promptly mail copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.))~~

(6) **Portable (~~(equipment)~~) sources.** The owner(s) or operator(s) of (~~("portable equipment,")~~) portable sources, as defined in SWCAA 400-030, shall be allowed to operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected emission units are registered with the Agency pursuant to SWCAA 400-100.

(b) The affected emission units have an air discharge permit as a portable "stationary source" issued by SWCAA.

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location ~~((at least 10 business days))~~ prior to starting the operation. This rule section supersedes corresponding notification requirements contained in existing air discharge permits.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

~~((e) Landowners and residents of immediately adjacent properties are notified by the owner(s) or operator(s) of the "portable equipment" in writing at least 10 business days prior to commencement of operations at the proposed location. Copies of the notification letters shall be mailed to the Agency. Written notification to the adjacent landowners and residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and the address and phone number for SWCAA. Written notification shall indicate that all comments shall be directed to the Agency.))~~

~~("Portable equipment")~~ A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be ~~((considered to be permanently shutdown and will be))~~ removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any ~~((portable equipment))~~ portable source removed from active registration shall ~~((be required to))~~ submit a new permit application pursuant to SWCAA 400-109 and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air dis-

charge permit issued pursuant to this section shall be considered a violation of this section. Noncompliance with any term of a regulatory order or air discharge permit used to satisfy the criteria of SWCAA 400-036 shall be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. 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 commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. To obtain an extension the permittee must submit a written request to the Agency at least 60 calendar days prior to permit expiration. The request shall clearly identify the justification for an extension and include relevant supporting information. The Agency will review all submitted information, and then approve or deny the request in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency shall provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology ~~((and comply with the public notice requirements in WAC 173-400-171)).~~ The extension of a project that is either a major stationary source or a major modification, as those terms are defined in SWCAA 400-810, shall also require determination of LAER as it exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

The Agency may revoke a source's Order of Approval or air discharge permit if applicable registration fees are delinquent for 2 or more consecutive years.

(9) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause an applicable emissions ~~((limit or))~~ standard set by regulation or rule to be exceeded;

(ii) No ambient air quality standard or ambient air increment will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the Agency to determine compliance with an emissions standard;

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112, ~~((and))~~ 400-113, and 400-830(3) as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

(c) Actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, shall be considered when determining which new source review approvals are required.

(e) A request to change approval/permit conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109 ~~((3))~~(4) shall apply to these requests.

(10) **Reopening for cause.** The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

(a) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.

(b) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

(c) The permit does not meet minimum federal standards.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in ~~((SWCAA 400-030, subsections (60)(a), (61)(a), (71)(a) and (107)(a) respectively))~~ WAC 173-400-710.

~~((An air discharge permit application to establish a "new source", install or replace an "emission unit" or make a modification to a "stationary source" in an area that is covered by a maintenance plan, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section.))~~ "New sources" ~~((7 new "emission units"))~~ or modifications within a designated maintenance plan area, including "stationary sources" that emit VOC or NO_x in a designated ozone maintenance plan area, shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification shall:

(a) 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, emission standards adopted under Chapter 70.94 RCW, and the applicable emission standards of the Agency; and

(b) Not cause any ambient air quality standard as provided in SWCAA 400-113(3) to be violated; and

(c) Not violate the requirements for reasonable further progress established by the Washington State Implementation Plan; and

(d) Minimize emissions to the extent that the "new source" or modification will not delay the attainment date for a nonattainment area, exceed emission levels or other requirements provided in a maintenance plan for an area that was previously identified as a nonattainment area, nor cause or contribute to a violation of any ambient air quality standard.

(2) **Control Technology Requirements - BACT/LAER.** Except as provided below, the owner or operator of the proposed "new source", "emission unit" or modification shall apply BACT for each pollutant. In the case of a modification, the requirement for BACT shall apply to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may require the application of LAER for the maintenance pollutant(s) and any pollutant for which the proposed "new source" or modification is major.

(3) **Source compliance.** The owner or operator of the proposed "new source", "emission unit" or modification shall certify that all "stationary sources" owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in Washington are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Washington Clean Air Act Chapter 70.94 RCW ~~((3))~~.

(4) **Alternative analysis.**

(a) Except as provided in subsection (c) of this section, the owner or operator of a proposed "major stationary source" or "major modification" shall conduct an alternatives analysis;

(b) This analysis shall include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed "stationary source" or modification that demonstrates that benefits of the proposed "stationary source" or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification;

(c) This analysis shall not be required for a "major stationary source" or "major modification" that is subject to this rule due to emissions of particulate matter in a designated TSP maintenance area.

(5) **Emission offsets and industrial growth allowances.** The owner or operator of a proposed new "major stationary source" or "major modification" shall provide emission offsets that satisfy the requirements of this section. Except as provided in subsection (a) of this section, the offset requirements of this section may be met in whole, or in part, by an allocation from an industrial growth allowance, if available. Industrial growth allowances for "stationary sources" in a maintenance plan area are identified in and governed by the Washington SIP and the maintenance plan for

the applicable maintenance plan area. All growth allowance allocations for the maintenance plan areas within the Agency's jurisdiction shall be made in accordance with this section.

(a) Available growth allowances may be increased or decreased as provided in a revision to the maintenance plan submitted to and approved by EPA. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may suspend the use of growth allowances, and require the proposed new "major stationary source" or "major modification" to provide offsets as described in subsection (c) below.

(b) The owner or operator of a proposed new "major stationary source" or "major modification" emitting VOCs, NO_x, or CO may obtain a portion of any remaining emissions in the respective growth allowance in accordance with the following process:

(i) Access is on a first-come-first-served basis, based on the date of a complete application and allowance allocation request;

(ii) Growth allowances shall be used to satisfy offset requirements at a ratio of 1 to 1 for new VOC and/or NO_x emissions.

(iii) No single "stationary source" may receive an emissions allocation of more than 50 percent of the available growth allowance, or up to 10.0 tons per year, whichever is greater. On a case-by-case basis, the SWCAA Board of Directors may approve an emissions allocation of greater than 50 percent upon consideration of the following:

(A) Information submitted by the "stationary source" to SWCAA justifying its request for exceeding the 50 percent emissions allocation, based on significant economic, employment, or other benefits to the maintenance plan area that will result from the proposed new "major stationary source" or "major modification";

(B) Information provided by SWCAA on other known new "major stationary sources" or "major modifications" seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the "stationary source" or SWCAA.

(iv) To avoid jeopardizing maintenance of the ozone standard during the interim years of the ozone maintenance plan, SWCAA may limit the quantity of VOC and NO_x growth allowances made available each year. SWCAA will track use of VOC and NO_x allocations from the growth allowances.

(v) The amount of the CO growth allowance that can be allocated is identified in the applicable CO maintenance plan, if any.

(c) If no emissions remain in the respective growth allowance, or the Agency has suspended the use of growth allowances, the owner or operator of the proposed "major stationary source" or "major modification" shall provide offsets.

(i) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the "new source" or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in 40 CFR

Part 51, Appendix W, Guideline on Air Quality Models (Revised).

(ii) Offsets for VOCs or nitrogen oxides shall be within the same maintenance plan area as the proposed "stationary source." Offsets for particulate matter, PM₁₀, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants may be from inside or outside of the same maintenance plan area.

(iii) "New sources" or modifications shall meet the following offset requirements:

(A) Within a designated maintenance plan area, the offsets shall provide reductions that are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;

(B) Outside a designated maintenance plan area, owners or operators of "new sources" or modifications which have a significant air quality impact on the maintenance plan area as provided in SWCAA 400-113(3) shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level within the maintenance plan area; and

(C) The emission reductions must provide for a net air quality benefit.

(I) New "major stationary sources" within an ozone maintenance plan area shall:

(a) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(b) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(II) "Stationary sources" within an ozone maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(b) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(III) New "major stationary sources" within a carbon monoxide maintenance plan area shall:

(a) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(IV) "Stationary sources" within a carbon monoxide maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(iv) Emission reductions shall be of the same type of pollutant as the emissions from the "new source" or modification. Sources of PM₁₀ shall be offset with particulate in the same size range.

(v) Emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete application for the "new source" or modification. This

time limitation may be extended through banking, as provided in SWCAA 400-130, 400-131 and 400-136 for banking activities approved after the effective date of this regulation. In the case of replacement facilities, SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that emissions do not exceed the new emission limits.

(vi) Offsets for new "major stationary sources" or "major modifications" in a maintenance plan area shall meet the following requirements:

(A) The proposed new level of allowable emissions of the "stationary source" or emission unit providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit. No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission unit providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(B) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the new or modified "stationary source" commences operation. The "new source" may not commence operation before the date such reductions are actually achieved. SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that the facility-wide emissions do not exceed the new emission limit.

~~((9))~~ **(6) PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" for the purposes of the PSD program as described in WAC 173-400-700 through 173-400-750, the "new source" or modification shall meet the requirements of that program for all pollutants. For maintenance plan pollutants, the "new source" shall meet all PSD requirements in addition to the requirements of this section.

~~((10))~~ **(7) Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), the "new source" shall meet all applicable requirements of that regulation.

~~((11))~~ **(8) Visibility.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the "new source" shall meet all the visibility protection requirements of WAC 173-400-117.

~~((12))~~ **(9) Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-112 Requirements for New Sources in Non-attainment Areas

~~((For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions~~

~~found in SWCAA 400-030, subsections (60)(a), (61)(a), (71)(a) and (107)(a) respectively.~~

~~An air discharge permit application to establish a "new source" or make a modification to a "stationary source" in a nonattainment area, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section.)~~ "New sources" or modifications within a designated nonattainment area shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification 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, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification will employ BACT for all air contaminants not subject to LAER that the "new source" will emit or for which the modification will cause an emissions increase. ~~((-except that))~~ If the "new source" is a "major stationary source" or the proposed modification is a "major modification" it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed "new source" is major or for which the existing source is major and the modification is ~~((major))~~ significant.

(3) **Ambient air quality standards.** The proposed "new source" or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Washington SIP and will comply with SWCAA 400-113(3) for all air contaminants for which the area has not been designated nonattainment.

~~((If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the Agency has determined, based on review of an analysis performed by the "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.~~

~~((If the proposed "new source" or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions of the air contaminant for which the area has been designated nonattainment from the proposed "new source" or modification shall be offset by reductions in actual emissions of the air contaminant for which the area has been designated nonattainment from existing "stationary sources" in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of Section 172 of the Federal Clean Air Act)~~

reasonable further progress. All offsetting emission reductions must satisfy the following requirements:

(a) The proposed new level of allowable emissions of the "stationary source" or emission unit(s) providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit(s). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits required by the Federal Clean Air Act, including the Washington SIP, cannot be credited.

(b) The emission reductions must provide for a net air quality benefit.

(i) New "major stationary sources" within a marginal ozone nonattainment area shall:

(A) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(B) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.

(ii) "Stationary sources" within a marginal ozone nonattainment area undergoing "major modifications" shall:

(A) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(B) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(iii) New "major stationary sources" within a moderate carbon monoxide nonattainment area shall offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(iv) "Stationary sources" within a moderate carbon monoxide nonattainment area undergoing "major modifications" shall offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(v) For any other nonattainment area, determinations on whether emission offsets provide a positive net air quality benefit shall be made in accordance with the guidelines contained in 40 CFR Part 51, Appendix S (as in effect on July 1, 2002).

(e) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the air discharge permit for the new or modified "stationary source" becomes effective. An emission reduction credit issued under SWCAA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(6)) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

((7) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the owner or operator shall demonstrate that all "major stationary sources" owned or operated by such person (or by

any entity controlling, controlled by, or under common control of such person) in Washington 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 contained in the Washington SIP.

(8)) (5) **Major new source review.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" ((for the purposes of the PSD program described in WAC 173-400-141)) as those terms are defined in SWCAA 400-810, it shall meet the requirements of ((that program for all air contaminants for which the area has not been designated nonattainment)) SWCAA 400-800 through 400-860.

((9)) (6) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

((10)) (7) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," ((as those terms are defined in SWCAA 400-030(59)(b) and (60)(b);)) it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

((For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in SWCAA 400-030, subsections (60)(b), (61)(b), (71)(b) and (107)(b) respectively.

An air discharge permit application to establish a "new source", install or replace an "emission unit" or make a modification to a "stationary source") "New sources" or modifications in an area that is in attainment or unclassifiable ((for any air contaminant the proposed "new source" would emit, and that is in attainment or unclassifiable for ozone if the proposed new or modified "stationary source" would emit VOC or NO_x, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section. The air discharge permit or other regulatory order shall not be issued until the "new source", "emission unit" or modification meets)) shall meet the following requirements:

(1) **Emission standards.** The proposed "new source", "emission unit" or modification shall 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, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification shall employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the "new source" or modification.

(3) **Allowable impact levels.** Allowable emissions from the proposed "new source", "emission unit" or modification shall not delay the attainment date for an area not in attainment, nor cause or contribute to a violation of any ambient air quality standard. This requirement will be met if the projected impact of the allowable emissions from the proposed "new source" or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment or maintenance plan area does not exceed the following impact levels for the pollutant(s) for which the area has been designated nonattainment or maintenance:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³	-	-	-
NO ₂	1.0 µg/m ³	-	-	-	-

If the projected impact of the proposed "new source" or modification exceeds an applicable value from the table above, the owner or operator shall provide offsetting emission reductions sufficient to reduce the projected impact to below the allowable impact level. For a proposed "new source" or modification with a projected impact within a maintenance area, this offset requirement may be met in whole, or in part, by an allocation from an industrial growth allowance. Emission offsets and growth allowance allocations used to satisfy the requirements of this section shall comply with the provisions of SWCAA (~~(400-111(5))~~) 400-840.

(4) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a

- (a) 40 CFR 60.5 Determination of construction or modification
- (b) 40 CFR 60.6 Review of plans
- (c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)
- (d) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)
- (e) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)
- (f) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)
- (g) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)
- (h) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)

"major modification", as those terms are defined in WAC 173-400-710, it shall meet all applicable requirements of WAC 173-400-700 through 173-400-750.

(5) **Toxics.** If the proposed "new source" or the proposed modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

(6) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

(7) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices as in effect on ~~(January 1, 2009)~~ July 1, 2015 are adopted by reference. The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to 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) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

- (i) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)
Note: These sources are regulated under SWCAA 400-050(4)
- (j) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)
Note: These sources are regulated under SWCAA 400-050(4)
- (k) Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004. (ref. 40 CFR 60.2980 et seq.)
- (l) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)
- (m) Subpart MMMM Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)
- (n) Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.)
- (o) Subpart UUUU Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700 et seq.)

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

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-130 Use of Emission Reduction Credits

~~(1) **(Applicability.** The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Agency. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date, fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reduction credits shall revert back to the Agency. The Agency may keep said credits in a credit bank to be used by the Agency in the best interest of the area or credits may be dissolved by the Agency.)~~

~~((2)) **Permissible use.** An ERC may be used:~~

~~(a) To satisfy the requirements for authorization of a bubble under SWCAA 400-120, ((as a part of a determination of "net emissions increase," or))~~

~~(b) As an offsetting reduction to satisfy the requirements for new source review per SWCAA 400-111, ((400-112, or)) 400-113(3) or 400-830, or~~

~~(c) To demonstrate a creditable contemporaneous emission reduction for determining a net emissions increase as defined in WAC 173-400-710 and SWCAA 400-810 provided the ERC meets the criteria to be a creditable contemporaneous emission reduction.~~

The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

~~((3)) **(2) Conditions of use.** An ERC may be used only for the air contaminant(s) for which it was issued and in the area for which it was issued except in the case of transport-~~

able pollutants, which will be determined on a case-by-case basis and per interagency agreement for interstate transfers. The Agency may impose additional conditions of use of ERCs to account for temporal and spatial differences between the emission unit(s) that generated the ERC and the emission unit(s) that use the ERC. An ERC may not be used in place of a growth allowance as required under SWCAA 400-111.

~~((4)) **(3) Procedures to use ERC.**~~

~~(a) **Individual use.** When an ERC is used under subsection (2) of this section, an application must be submitted to the Agency and the Agency must issue a regulatory order for use of the ERC(s).~~

~~(b) **Sale or transfer of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Agency. After receiving an application, the Agency shall reissue a regulatory order to the new owner. The Agency shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.~~

~~((5)) **(4) Expiration of ERC.** An unused ERC and any unused portion thereof shall expire ((five)) ten years after the date the emission reduction was accomplished and not the date of the regulatory order.~~

~~((6)) **(5) Maintenance of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank.~~

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank

(1) **Applicability.** The owner(s) or operator(s) of any "stationary source" may apply to the Agency for an emission reduction credit (ERC) if the "stationary source" proposes to reduce its actual emission rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emission unit(s) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within 180 calendar days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Agency.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule, Order of Approval, air discharge permit, or other applicable emission standard (e.g., NSPS, NESHAPS, BACT, MACT, RACT, LAER). The emission reductions must be permanent and enforceable.

(b) The quantity of emission reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. For the purposes of this regulation, the old actual emission rate ~~((shall be defined as the highest annual emission rate during either of the last two full calendar years-))~~ is the average emissions rate occurring during the most recent 24 month period preceding the request for an ERC. An alternative twenty-four month period from within the previous five years may be accepted by the Agency if the owner or operator of the source demonstrates to the satisfaction of the Agency that the alternative period is more representative of actual operations of the unit or source.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emission reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emission unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWCAA ~~((400-112(5)))~~ 400-111, 400-113(3), or 400-830, nor as part of a bubble transaction under SWCAA 400-120 ~~((nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard)).~~

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the "stationary source" or emission unit of the contaminant for

which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(h) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(4) **Additional information.** Within 30 calendar days after the receipt of an ERC application, supporting data and documentation, the Agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within 60 calendar days after all required information has been received, the Agency shall approve or deny the application, based on a finding that conditions in subsections (3)(a) through (g) of this section have been satisfied or not. If the application is approved, the Agency shall:

(a) Issue a regulatory order pursuant to this section to assure that the emissions from the "source" will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order shall include any conditions required to assure that subsections (3)(a) through ~~((g))~~ (h) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order must prohibit operation of the affected equipment; and,

(b) Issue a regulatory order with emission reduction credit. The regulatory order shall specify the issue date of the credit, the expiration date of the credit, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the regulatory order is issued.

(6) **Maintenance and use of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) **Conditions for ERC bank.**

(a) ERCs established under SWCAA 400-131 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be available for public allocation unless specifically requested by the owner(s) of the ERCs ~~((or the owner of the ERCs fails to maintain registration with the Agency)).~~

(3) **Maintenance of the bank.**

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10 percent to allow for minor emission increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10 percent without compensation to the holder after public involvement pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The Agency shall not provide greater than 25 percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the Agency issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or emission unit the remaining amount of the emission reduction credit shall be reviewed by the Agency and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Agency shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington SIP review. The results of the review shall be reported to the Board with recommendations for correction if the Agency deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) **Expiration of public credits.**

~~(a) ((Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the shut-down of the Carborundum facility expired on July 8, 1996 as provided in Regulatory Order SWCAA 86-843 which established such credits.~~

~~(b) Emission reduction credits deposited in the bank for public allocation as the result of Board Resolution 1988-3 amended by Board Resolution 1989-3 expired on January 24, 1999.~~

~~(c) Credits and regulatory orders/certificates assigned to "stationary sources" from this public bank expired on July 8, 1996.~~

~~(d))~~ Each "stationary source" which had credits assigned from the public bank by issuance of a regulatory order shall be approved for the total of previous emissions plus any additional amount approved under a regulatory order assigning public credits to that "stationary source" effective July 8, 1996.

~~((e))~~ ~~(b)~~ Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

~~((SWCAA 400-140 Protection of Ambient Air Increments~~

~~(1) Purpose.~~ This section constitutes a program to prevent significant deterioration of air quality by protecting ambient air increments.

~~(2) Applicability.~~ This section shall apply to all "sources" within SWCAA jurisdiction.

~~(3) Requirements.~~

~~(a) Ambient air increments.~~ The ambient impact of any proposed "source" or modification shall not cause an increase in ambient pollutant concentration over the applicable baseline concentration in excess of the following increments:

Area Designation	Pollutant	Max. allowable increase (µg/m ³)
Class I	Particulate matter:	
	PM ₁₀ , annual arithmetic mean	4
	PM ₁₀ , 24-hr maximum	8
Class II	PM ₁₀ , annual arithmetic mean	17
	PM ₁₀ , 24-hr maximum	30
Class I	Sulfur dioxide	
	Annual arithmetic mean	2

Area Designation	Pollutant	Max. allowable increase (µg/m ³)
Class H	24-hr maximum	5
	3-hr maximum	25
	Annual arithmetic mean	20
	24-hr maximum	94
	3-hr maximum	542
Class I Class H	Nitrogen dioxide	
	Annual arithmetic mean	2.5
	Annual arithmetic mean	25

(b) ~~Source notification. If possible over consumption of an ambient air increment is identified, the Agency shall notify the affected "source(s)" thirty days prior to taking further action. The purpose of notification is to allow the "source(s)" an opportunity to review the possible over consumption and related emission information.~~

(c) ~~Air quality analysis. If possible over consumption of an ambient air increment is identified, an air quality analysis shall be conducted by the Agency or the affected "source(s)" to demonstrate compliance with the requirements of this section.~~

(d) ~~Cost of air quality analysis:~~

(i) ~~The cost of any air quality analysis conducted pursuant to the requirements of SWCAA 400-046 and 400-110 shall be paid by the permit applicant.~~

(ii) ~~The cost of any air quality analysis conducted by the Agency pursuant to this section shall be:~~

(A) ~~Assessed to the affected "source" if the identified increment violation is attributed solely to the emissions of a single "source;" or~~

(B) ~~Assessed to the affected "sources" on a prorated basis if the increment violation is attributed to the combined emissions of multiple "sources" located within the affected baseline area. The prorated assessment will be based on the relative contribution of each "source" to the identified increment violation.~~

(c) ~~If over consumption of an ambient air increment is demonstrated, the Agency shall take actions to require affected "sources" to reduce ambient impact to a level less than the allowable increment.)~~

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

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

~~((SWCAA 400-141 Prevention of Significant Deterioration (PSD))~~

~~(1) **Program adoption.** WAC 173-400-700 through 173-400-750, as in effect on February 10, 2005, is hereby adopted by reference.~~

~~(2) **Permitting.** The Agency does not currently have delegated authority from EPA to issue PSD permits. At this time, all PSD permits in the State of Washington are issued by Ecology. "Stationary sources" that comply with the provisions of WAC 173-400-700 through 173-400-750 shall be~~

~~considered to have met the permitting requirements of this section. Affected "stationary sources" shall submit a copy of PSD application information to the Agency pursuant to WAC 173-400-730 (b)(iii).~~

~~(3) **Monitoring, Recordkeeping and Reporting.** Pursuant to WAC 173-400-720 (4)(b), a PSD applicable "stationary source" within the Agency's jurisdiction shall submit all required reports to the Agency.~~

~~(4) **Enforcement.** The Agency shall enforce the requirements of Ecology's PSD Program, and the terms and conditions of PSD permits issued by Ecology to "stationary sources" within the Agency's jurisdiction.)~~

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-171 Public Involvement

(1) **Public notice.**

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions. Notice shall be published for a minimum of 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination on the affected action for a minimum of 15 calendar days following the date of publication. Each notice shall, at a minimum, include the following information:

- (i) The name and address of the owner or operator and the affected facility;
- (ii) A brief description of the proposed action;
- (iii) Agency contact information;
- (iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and
- (v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter or fax. A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic

receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not provided may be processed without further public involvement.

(2) ~~((Mandatory))~~ **Provision of public comment period.**

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

(i) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on July 1, ~~((2002))~~ 2015) as part of review under SWCAA 400-046, ~~((or))~~ 400-110, or WAC 173-400-117;

(ii) Any order or permit to determine RACT;

(iii) Any order or permit to establish a compliance schedule pursuant to SWCAA 400-161 or a variance ~~((A variance shall be handled as provided in))~~ pursuant to SWCAA 400-180;

(iv) Any order to demonstrate the creditable height of a stack which exceeds the 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;

(v) Any order or permit to authorize a bubble;

(vi) Any order or permit used to establish a creditable emission reduction;

(vii) An Order of Discontinuance as provided in SWCAA 400-230 (1)(g);

(viii) Any order or permit used to establish a "synthetic minor" or modification thereof;

(ix) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

(x) Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

(xi) Any proposed action for which the Executive Director determines there is a substantial public interest including:

- Air discharge permit applications
- Nonroad engine permit applications
- Other actions of significance

(xii) Any order or permit to approve a new or modified source if the associated increase in emissions of any toxic air pollutant is greater than the applicable acceptable source impact level specified in WAC 173-460, as in effect 8/21/98.

(b) Any air discharge permit application designated for integrated review that includes a PSD permit application ~~((an application for a "major modification" in a nonattainment area or an application for a "major stationary source" in a nonattainment area))~~ must comply with the public notice requirements of WAC ~~((173-400-171))~~ 173-400-740.

(3) **Public comment period requirements.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air

quality, shall 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 SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be ~~((published in a newspaper of general circulation))~~ given by prominent advertisement in the area of the proposed project ~~((for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to subsections (2)(a)(x) or (2)(a)(xi) of this section, publication on the SWCAA Internet homepage for a minimum of 30 calendar days may be substituted for newspaper publication)).~~ Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposal, including a description of the processes subject to permitting;

(iii) A description of the air pollutant emissions associated with the proposal;

(iv) Identification of Agency staff from whom interested persons may obtain additional information;

~~((iii))~~ (v) The location of the documents made available for public inspection;

~~((iv))~~ (vi) Identification of a 30 calendar day period for submitting written comment to the Agency;

~~((v))~~ (vii) A statement that a public hearing may be held if the Agency determines within a 30 calendar day period that significant public interest exists;

~~((vi))~~ (viii) The length of the public comment period in the event of a public hearing; and

~~((vii))~~ (ix) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's draft decision.

(c) EPA Notification. A copy of ~~((the))~~ each comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Agency may hold a public hearing if the Executive Director determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, a minimum of 30 days notice will be provided to the public prior to the hearing date. The public comment period for the affected action shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or

modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) **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 (e.g., SEPA). This subsection does not apply to PSD permit applications ((for a "major modification" or a "major stationary source.")) processed by Ecology.

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-190 Requirements for Nonattainment Areas

The development of specific requirements for nonattainment areas shall include consultation with local government in the area and ((shall)) must include public involvement per SWCAA 400-171. Requirements for new or modified "stationary sources" in nonattainment areas are found in SWCAA 400-110, ((and SWCAA)) 400-112 and 400-800 through -860.

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks shall be configured to discharge vertically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks shall discharge at a point higher than surrounding buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis provided the owner/operator demonstrates that the alternate configuration will not cause or contribute to a violation of increment or a NAAQS.

The following source categories are not subject to the provisions of this section:

(a) Combustion units used for space heating provided the units are fired on natural gas, propane, or ultra low sulfur diesel (≤ 15 ppmw S content) and have an individual heat input rating of 2.0 MMBtu/hr or less.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under ((the)) an applicable Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(3) **Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$ where:

H_g	=	"good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,
H	=	height of nearby structure(s) measured from the ground level elevation at the base of the stack,
L	=	lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(4) **Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-230 Regulatory Actions and Civil Penalties

(1) The Agency shall have the power to issue such orders as necessary to effectuate the purpose of RCW 70.94 and RCW 43.21B as provided in, but not limited to: RCW 70.94.-141, RCW 70.94.152, RCW 70.94.153, RCW 70.94.332 and RCW 43.21B.300. For informational purposes, a list of specific regulatory orders issued by the Agency in the past is presented below.

(a) **Order of Approval.** An order issued by the Agency to provide approval for an air discharge permit or ERC appli-

cation. Orders of Approval are also known as air discharge permits.

(b) **Order of Denial.** An order issued by the Agency in response to an air discharge permit application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or applicable emission standard.

(c) **Order of Violation.** An order issued by the Agency to document specific regulation(s) alleged to be violated and establish the facts surrounding a violation.

(d) **Order of Prevention.** An order issued by the Agency to prevent installation or construction of an emission unit, performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Agency review and approval, or actions being conducted in addition to a previous Agency approval without prior approval.

(e) **Consent Order.** An order issued by the Agency to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements, testing requirements, or other limits or controls that are determined by the Agency to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a "source" may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. Consent Orders are agreed to and signed by an appropriate officer of the company or "source" for which the Consent Order is prepared and the Control Officer, or designee, of the Agency. A Consent Order does not sanction noncompliance with applicable requirements.

(f) **Compliance Schedule Order.** An order issued by the Agency to a "source" to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed.

(g) **Order of Discontinuance.** An order issued by the Agency for any "source" that has permanently shutdown, has not maintained registration for affected emission units, or that continues to operate in violation of applicable regulations and requirements.

(h) **Corrective Action Order.** An order issued by the Agency to any "source" to provide measures to correct or rectify a situation that is an immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health, welfare or enjoyment of personal or public property.

(i) **Administrative Order.** An order issued by the Agency to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattainment boundaries, establish working relationships with other regulatory agencies, establish authority for

enforcement of identified actions, and other activities identified by the Agency.

(j) **Resolutions.** A document issued by the Agency as a means to record a Board of Directors decision, authorize or approve budget transactions, establish Agency policies, or take other actions as determined by the Agency.

(2) The Agency may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.

(a) **Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the Agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the Agency may require that the alleged violator or violators appear before it for the purpose of providing the Agency information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) **Civil penalties.**

(i) In addition to or as an alternate to any other penalty provided by law, any person (e.g., owner, owner's agent, contractor, operator) who violates any of the provisions of Chapter 70.94 ~~((or 70.120 RCW,))~~ or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this regulation shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

(iii) Each act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300. ~~((Section 113 (e)(2) of the 1990 Clean Air Act Amendments provides that the number of "days of violation" is to be counted beginning on the first proven day of violation and continuing every day until the violator demonstrates that it achieved continuous compliance, unless the violator can prove by preponderance of the evidence that there were intervening days on which no violation occurred. This definition applies to all civil and administrative penalties.))~~

(iv) All penalties recovered under this section by the Agency, shall be paid into the treasury of the Agency and credited to its funds.

(v) To secure the penalty incurred under this section, the Agency shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Agency shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.

(vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of Discontinuance.** The Control Officer may accept an assurance of discontinuance as provided in RCW 70.94.435 of any act or practice deemed in violation of this regulation as written and certified to by the "source." Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued there under which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the Superior Court.

(4) **Restraining orders & injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of its regulations, the Control Officer, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency episodes.** The Agency may issue such orders as authorized by SWCAA 435 whenever an air pollution episode forecast is declared.

(6) **Compliance Orders.** The Agency may issue a Compliance Order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. The order shall require the recipient of the Notice of Violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated and completed. Compliance Orders are not subject to the public notice requirements of SWCAA 400-171.

NEW SECTION

SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area.

SWCAA 400-800 through 400-860 shall apply to any new major stationary source or major modification of an existing major stationary source located in a designated non-attainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

NEW SECTION**SWCAA 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 SWCAA 400-800 through 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 SWCAA 400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit 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 SWCAA 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 24 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 24 month period selected by the owner or operator within the 5 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 24 month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24 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 24 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 SWCAA 400-800 through 400-860 or under a plan approved by the administrator, whichever is earlier, except that the 10 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 24 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 24 month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR 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 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24 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) "**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 if it 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 CFR Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement 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.

(4) "**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).

(5) "**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.

(6) "**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.

(7) "**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.

(8) "**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.

(9) "**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, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

(10) "**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).

(11) "**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.

(12) "**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 2 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.

(13) "**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 stationary 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 SWCAA 400-840(7)) and for PALs (see SWCAA 400-850).

(14) "**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.

(15) "**Major stationary source**" means:

(a) Any stationary source of air pollutants that emits, or has the potential to emit, 100 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) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) 50 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) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) 50 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);

(vi) 70 tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of SWCAA 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, 100 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) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 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) 100 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) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 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 50 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 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 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 Federal Clean Air Act.

(16) "**Major modification**" means:

(a) 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 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 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 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 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 CFR Part 51, Appendix S adopted by reference in SWCAA 400-850 shall apply.

(e) For the purpose of applying the requirements of SWCAA 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.

(17) "**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.

(18) "**Net emissions increase**" means:

(a) 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 SWCAA 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 1 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 CFR 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 SWCAA 400-113(3) or 400-830 or in issuing any permit under regulations approved pursuant to 40 CFR 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.

(19) "**Nonattainment major new source review (NSR) program**" means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51 Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(20) "**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.

(21) "**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, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(22) "**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 and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(23) "**Project**" means a physical change in, or change in the method of operation of, an existing major stationary source.

(24) "**Projected actual emissions**" means:

(a) 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 (12 month period) following the date the unit resumes regular operation after the project, or in any one of the 10 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 24 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) 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).

(25) "**Regulated NSR pollutant**" means the following pollutants:

(a)(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 and 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 SWCAA 400-800 through 400-850 made without accounting for condensable particulate matter shall not be considered in violation of SWCAA 400-800 through 400-850.

(26) "**Replacement unit**" means:

(a) 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 CFR 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.

(27) "**Reviewing authority**" means the same as "permitting authority" as defined in SWCAA 400-030.

(28) "**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:

<i>Pollutant</i>	<i>Emission Rate</i>
Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds; or 40 tpy of nitrogen oxides
Lead	0.6 tpy
PM-10	15 tpy
PM-2.5	10 tpy of direct PM-2.5 emissions; or 40 tpy of nitrogen oxide emissions; or 40 tpy 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 25 tons per year.

(c) For the purposes of applying the requirements of SWCAA 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 50 tons per year, provided the administrator 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.

(29) "**Significant emissions increase**" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(30) "Source" and "stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(31) "**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.

NEW SECTION

SWCAA 400-820 Determining If a New Stationary Source or Modification to a Stationary Source is Subject to These Requirements

(1) Any new major stationary source located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, that would be major for the pollutant for which the area is designated nonattainment is subject to the permitting requirements of SWCAA 400-830 through 400-850. Any major modification of an existing major stationary source that is major for the pollutant for which an area is designated nonattainment, is located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, and has a significant net emissions increase of the pollutant for which the area is designated nonattainment, is subject to the permitting requirements of SWCAA 400-830 through 400-850. The procedures provided below must be used to determine if a modification would result in a significant net emissions increase of the nonattainment pollutant.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in SWCAA 400-810 (15)(e) or if the emissions 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 the definition of major stationary source contained in SWCAA 400-810 (15)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant

net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in SWCAA 400-850.

(5) The following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where 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 the definition of projected actual emissions contained in SWCAA 400-810 (24)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) 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 the definition of projected actual emissions contained in SWCAA 400-810 (24)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC applica-

tion required under the provisions of SWCAA 400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) 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 units identified in (a)(ii) of this subsection; 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 or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) The owner or operator shall submit a report to the permitting authority within 60 calendar days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) 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 (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within 60 calendar days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) 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).

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in WAC 173-401.

NEW SECTION

SWCAA 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 SWCAA 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 SWCAA 400-110 (3)(c) and 400-113(3) 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 stationary source is major and the proposed modification is significant.

(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 SWCAA 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 CFR 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 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 enforcement 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 CFR 51.165, or the requirements of 40 CFR Part 51, Appendix S, shall apply to the source or modification as though construction had not yet commenced on the source or modification. The requirements of 40 CFR Part 51, Appendix S shall not apply to a new or modified source for which enforceable limitations are established after SWCAA 400-800 through 400-850 have been approved into the Washington SIP.

NEW SECTION

SWCAA 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 SWCAA 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 SWCAA 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 CFR 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 SWCAA 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 SWCAA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for allowable emissions occurring during stationary source startup and shutdown.

(8) Emission offsets, including those described in an emission reduction credit issued under SWCAA 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 CFR 52.21 or regulations approved pursuant to 40 CFR 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).

NEW SECTION

SWCAA 400-850 Actual Emissions - Plantwide Applicability Limitation (PAL)

The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of May 1, 2012, is adopted by reference with the following exceptions:

(1) The term "reviewing agency" means "permitting agency" as defined in SWCAA 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 WAC 173-401.

(3) The reference to 40 CFR 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.

NEW SECTION

SWCAA 400-860 Public Involvement Procedures

The public involvement procedures in SWCAA 400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued pursuant to SWCAA 400-830 or 400-850 must comply with SWCAA 400-171.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

APPENDIX A SWCAA METHOD 9

VISUAL OPACITY DETERMINATION METHOD

1. Principle

The opacity of emissions from stationary sources is determined visually by a qualified observer.

2. Procedure

The observer must be certified in accordance with the provisions of Section 3 of 40 CFR Part 60, Appendix A, Method 9, as in effect on July 1, (~~2002~~) 2015.

2.1 Position

The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to his/her back. Consistent with maintaining the above requirement, the observer shall, as much as possible, make his/her observations from a position such that his/her line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g., roof monitors, open baghouses, non-circular stacks), approximately perpendicular to the longer axis of the outlet. The observer's line of sight should not include more than one plume at a time when multiple stacks are involved, and in any case, the observer should make his/her observations with his/her line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g., stub stacks on baghouses).

2.2 Field Records

The observer shall record the name of the plant, emission location, type of facility, observer's name and affiliation, a sketch of the observer's position relative to the source, and the date on a field data sheet. The time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume background are recorded on a field data sheet at the time opacity readings are initiated and completed.

2.3 Observations

Opacity observations shall be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals.

2.3.1 Attached Steam Plumes

When condensed water vapor is present within the plume as it emerges from the emission outlet, opacity observations shall be made beyond the point in the plume at which condensed water vapor is no longer visible. The observer shall record the approximate distance from the emission outlet to the point in the plume at which the observations are made.

2.3.2 Detached Steam Plumes

When water vapor in the plume condenses and becomes visible at a distinct distance from the emission outlet, the opacity of emissions should be evaluated at the emission outlet prior to the condensation of water vapor and the formation of the steam plume.

2.4 Recording Observations

Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals on a field data sheet. A minimum of 24 observations shall be recorded. Each momentary observation recorded shall be deemed to represent the average opacity of emissions for a 15-second period.

2.5 Data Reduction

The number of observations at each opacity level shall be determined and recorded on the field data sheet. Opacity shall be determined by the highest 13 observations in any consecutive 60-minute period. The opacity standard or emissions limit is exceeded if there are more than 12 observations during any consecutive 60-minute period for which an opacity greater than the standard or emission limit is recorded. The opacity standard is a 1 hour standard (rolling 60 minutes). Only one violation of the standard per hour may be recorded meaning that a violation for any given consecutive 60-minute period may be recorded in substantially fewer than 60 minutes. No one-hour time sets shall overlap for purpose of determining a violation or violations. Data used to establish a violation in one consecutive 60-minute period can not be used to establish a violation in a second consecutive 60-minute period.

3. References

Federal Register, Vol. 36, No. 247, page 24895, December 23, 1971.

"Criteria for Smoke and Opacity Training School 1970 - 1971" Oregon-Washington Air quality Committee."

"Guidelines for Evaluation of Visible Emissions" EPA 340/1-75-007."

Notes: (1) The difference between the SWCAA Method 9 and WDOE Method 9 or WDOE Method 9A is the SWCAA method does not recommend that the observer make note of the ambient relative humidity, ambient temperature, the point in the plume that the observations were made, the estimated depth of the plume at the point of observation, and the color and condition of the plume. In addition, the SWCAA method does not recommend that pictures be taken.

(2) The difference between the SWCAA Method 9 and EPA Method 9 is in the data reduction section. The SWCAA method establishes a three-minute period in any one-hour period where opacity can not exceed an opacity limit. For the SWCAA method, 13 readings in a 1-hour period or less, above the established opacity limit, no matter how much, constitutes a violation. The EPA method is an arithmetic average of any 24 consecutive readings at 15-second intervals. These values are averaged and this average value cannot exceed the established opacity limit.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-058 filed 2/15/01, effective 3/18/01)

APPENDIX B

Description of Vancouver Ozone and Carbon Monoxide Maintenance Plan Boundary

The ozone and carbon monoxide maintenance area boundary description begins at the northwest corner at the intersection of the section line on the south side of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W. The boundary turns southward following the east shores of Lake River, until it would intersect with the 14900 block NW, then easterly to join with NW 149th Street. This boundary runs until it meets the western edge of Interstate 5, then north to 159th Street and east on 159th Street to the east side of NE 50th Avenue. On 50th Avenue the boundary runs south until it joins the south bank of Salmon Creek, following the south branch of the creek until it reaches NE Caples Road, then southerly on the west side of Caples Road (currently SR-502) until it intersects with NE 144th Street. The boundary continues eastward along the south side of NE 144th Street following the 14400 block plane to where it would join with the west side of NE 212 Avenue, then southward to the south side of NE 109th Street. The boundary continues east on NE 109th Street, then southerly along the west side of NE 232 Avenue to where the 23200 block joins with the northern edge of NE 58th Street. The boundary continues east on NE 58th Street until the 5800 block intersects with the western edge of Livingston Road. The boundary follows Livingston Road South until it turns into NE 292nd Avenue. Staying on the plane of the 29200 block, the boundary proceeds south until it joins SE Blair Road. The boundary follows along the south-west side of Blair Road south-eastward to its intersection with Washougal River Road. The boundary proceeds eastward at the northern edge of the 2000 block to SE 20th Street. The boundary continues east on SE 20th Street until it intersects the western edge of SE Jennings Road (352nd Ave-

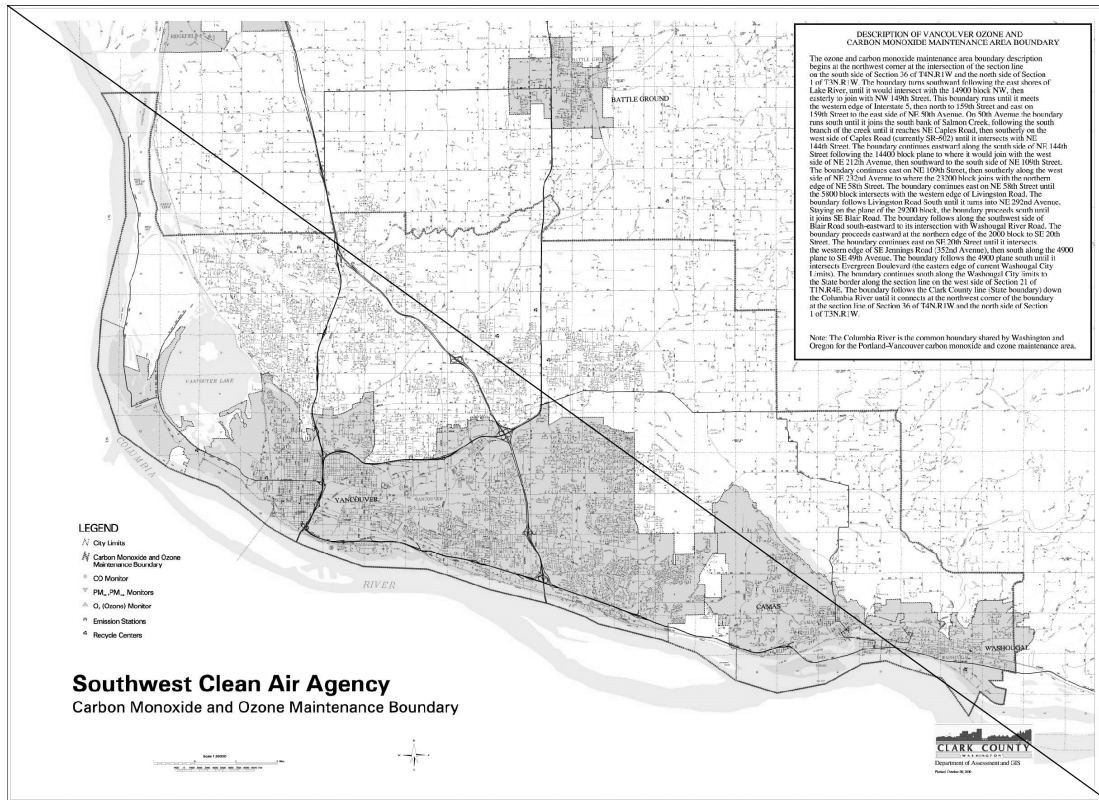
nue), then south along the 4900 plane to SE 49th Avenue. The boundary follows the 4900 plane south until it intersects Evergreen Boulevard (the eastern edge of current Washougal City limits). The boundary continues south along the Washougal City limits to the State border along the section line on the west side of Section 21 of T1N.R4E. The boundary follows the Clark County line (State boundary) down the

Columbia River until it connects at the northwest corner of the boundary at the section line of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W.

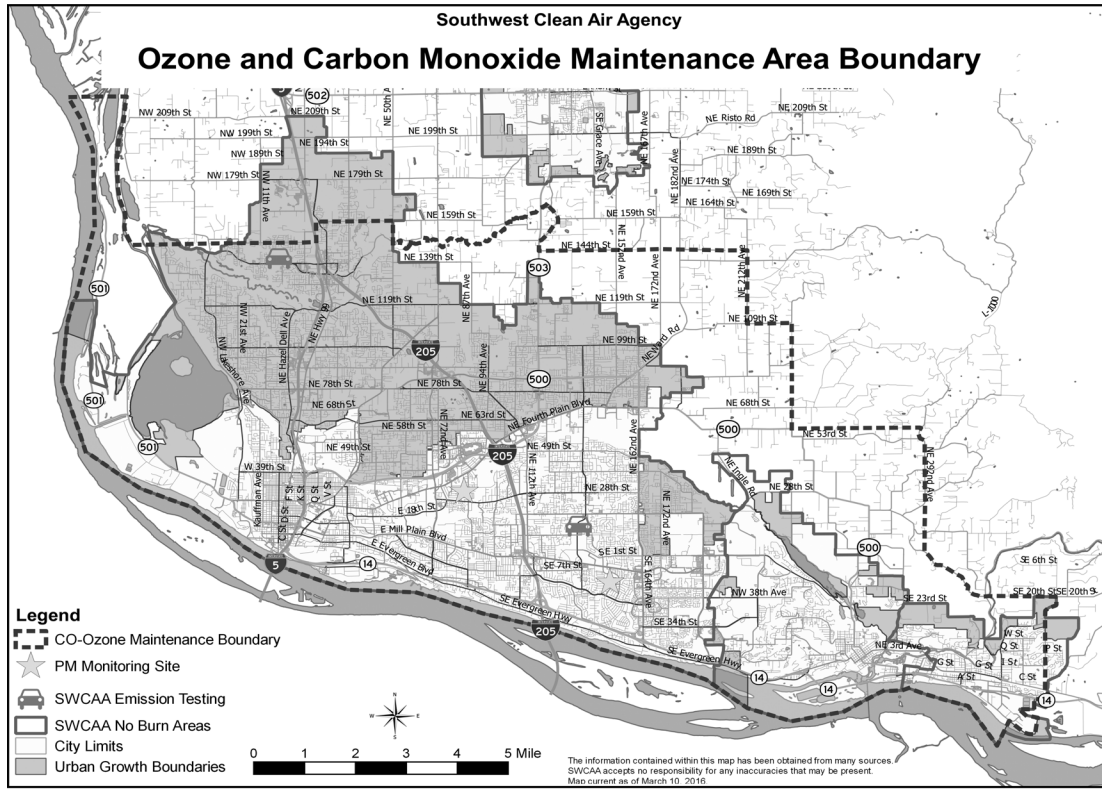
Note: The Columbia River is the common boundary shared by Washington and Oregon for the Portland-Vancouver carbon monoxide and ozone non-attainment area.

(Map of Vancouver Ozone and Carbon Dioxide Maintenance Area Boundary)

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AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

**APPENDIX C
FEDERAL STANDARDS ADOPTED BY REFERENCE**

The following lists of affected subparts ((†)) are provided for informational purposes only.

**STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES
(NSPS) 40 CFR 60**

- Subpart A General Provisions (re105f. 40 CFR 60.1 et seq.)
- Subpart D Fossil Fuel-fired Steam Generators for Which Construction is Commenced After August 17, 1971, and Prior to September 19, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40 et seq.)
- Subpart Da Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40a et seq.)
- Subpart Db Industrial-Commercial-Institutional Steam Generating Units for Which Construction Commenced After June 19, 1984, and Prior to June 19, 1986, Which Have a Heat Input Greater Than 29 Megawatts but less Than 73 Megawatts (ref. 40 CFR 60.40b et seq.)
- Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)
- Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)
- Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)
- Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996 (ref. 40 CFR 60.50c et seq.)
Subpart F	Portland Cement Plants (ref. 40 CFR 60.60 et seq.)
Subpart G	Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)
<u>Subpart Ga</u>	<u>Nitric Acid Plants for Which Construction, Reconstruction, or modification Commenced After October 14, 2001 (ref. 40 CFR 60.70a et seq.)</u>
Subpart H	Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)
Subpart I	Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)
Subpart J	Petroleum Refineries Which Produce Less Than 25,000 Barrels per Day of Refined Products (ref. 40 CFR 60.100 et seq.)
Subpart Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)
Subpart K	Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and Prior to May 19, 1978, Which Have a Capacity Greater Than 40,000 Gallons (ref. 40 CFR 60.110 et seq.)
Subpart Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)
Subpart Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed, Reconstructed, or Modified After July 23, 1984 (ref. 40 CFR 60.110b et seq.)
Subpart L	Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)
Subpart M	Brass and Bronze Ingot Production Plants (ref. 40 CFR 60.130 et seq.)
Subpart N	Iron and Steel Plants (ref. 40 CFR 60.140 et seq.)
Subpart Na	Secondary Emissions From Basic Oxygen Process Steel Making Facilities (ref. 40 CFR 60.140 et seq.)
Subpart O	Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)
Subpart P	Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)
Subpart Q	Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)
Subpart R	Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)
Subpart S	Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)
Subpart T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)
Subpart U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)
Subpart V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)
Subpart W	Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)
Subpart X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)
Subpart Y	Coal Preparation Plants (ref. 40 CFR 60.250 et seq.)
Subpart Z	Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)
Subpart AA	Steel Plants: Electric Arc Furnaces (ref. 40 CFR 60.270 et seq.)
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (ref. 40 CFR 60.270a et seq.)
Subpart BB	Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)
Subpart CC	Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)
Subpart DD	Grain Elevators (ref. 40 CFR 60.300 et seq.)
Subpart EE	Industrial Surface Coating: Metal Furniture (ref. 40 CFR 60.310 et seq.)
Subpart GG	Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)
Subpart HH	Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)
Subpart KK	Lead-Acid Battery Plants (ref. 40 CFR 60.370 et seq.)
Subpart LL	Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)
Subpart MM	Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)

Subpart NN	Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)
Subpart PP	Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)
Subpart QQ	Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)
Subpart RR	Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)
Subpart SS	Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)
Subpart TT	Industrial Surface Coating: Metal Coils (ref. 40 CFR 60.460 et seq.)
Subpart UU	Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)
Subpart VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)
Subpart VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)
Subpart WW	Beverage Can Surface Coating Operations (ref. 40 CFR 60.490 et seq.)
Subpart XX	Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)
Subpart AAA	New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)
Subpart BBB	Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)
Subpart DDD	VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)
Subpart FFF	Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)
Subpart GGG	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)
Subpart GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)
Subpart HHH	Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)
Subpart III	VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)
Subpart JJJ	Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)
Subpart KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants (ref. 40 CFR 60.630 et seq.)
Subpart LLL	Onshore Natural Gas Processing; SO ₂ Emissions (ref. 40 CFR 60.640 et seq.)
Subpart NNN	VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)
Subpart OOO	Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)
Subpart QQQ	VOC Emissions From Petroleum Refinery Waste Water Emissions (ref. 40 CFR 60.690 et seq.)
Subpart RRR	Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes (ref. 40 CFR 60.700 et seq.)
Subpart SSS	Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)
Subpart TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)
Subpart UUU	Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

- Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)
- Subpart WWW Municipal Solid Waste Landfills Constructed, Reconstructed or Modified on or After May 30, 1991 (ref. 40 CFR 60.750 et seq.)
(See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)
- Subpart AAAA Small Municipal Waste Combustion Units Constructed After August 30, 1999, or Modified or Reconstructed After June 6, 2001 (ref. 40 CFR 60.1000 et seq.)
(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)
- Subpart CCCC Commercial and Industrial Solid Waste Incinerators Constructed After November 30, 1999; or Modified or Reconstructed on or After June 1, 2001 (ref. 40 CFR 60.2000 et seq.)
(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)
- Subpart EEEE Other Solid Waste Incineration Unit for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. (ref. 40 CFR 60.2880 et seq.)
(~~Subpart EEEE Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004. (ref. 40 CFR 60.2980 et seq.)~~)
- Subpart ~~HHHH~~ Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)
- Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)
- Subpart ~~KKKK~~ ((~~Standards of Performance for~~)) Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)
- Subpart LLLL Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)
- Subpart OOOO Crude Oil and Natural Gas Production, Transmission and Distribution (ref. 40 CFR 60.5360 et seq.)
- Subpart QQQQ New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)
- Appendix A Test Methods (ref. 40 CFR 60, Appendix A)
- Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)
- Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)
- Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)
- Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)
- Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)
- NATIONAL EMISISON STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61**
- Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)
- Subpart B Radon Emissions from Underground Uranium Mines (ref. 40 CFR 61.20 et seq.)
- Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)
- Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)
- Subpart E Mercury (ref. 40 CFR 61.50 et seq.)
- Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)
- Subpart H Emissions of Radionuclides Other Than Radon from Department of Energy Facilities (ref. 40 CFR 61.90 et seq.)
- Subpart I Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and not Covered by Subpart H (ref. 40 CFR 61.100 et seq.)
- Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)
- Subpart K Radionuclide Emissions from Elemental Phosphorus Plants (ref. 40 CFR 61.120 et seq.)

Subpart L	Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)
Subpart M	Asbestos (ref. 40 CFR 61.140 et seq.)
Subpart N	Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)
Subpart O	Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)
Subpart P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)
Subpart Q	Radon Emissions from Department of Energy Facilities (ref. 40 CFR 61.190 et seq.)
Subpart R	Radon Emissions from Phosphogypsum Stacks (ref. 40 CFR 61.200 et seq.)
Subpart T	Radon Emissions from the Disposal of Uranium Mill Tailings (ref. 40 CFR 61.220 et seq.)
Subpart V	Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)
Subpart W	Radon Emissions from Operating Mill Tailings (ref. 40 CFR 61.250 et seq.)
Subpart Y	Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)
Subpart BB	Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)
Subpart FF	Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

**NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES
(MACT) 40 CFR 63**

Subpart A	General Provisions (ref. 40 CFR 63.1 et seq.)
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(G) and 112(J) (ref. 40 CFR 63.50 et seq.)
Subpart D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants (ref. 40 CFR 63.70 et seq.)
Subpart F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)
Subpart G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)
Subpart H	Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)
Subpart I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)
Subpart J	Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)
Subpart L	Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)
Subpart M	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (<i>as it applies to major sources only</i>) (ref. 40 CFR 63.320 et seq.)
Subpart N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Operations (ref. 40 CFR 63.340 et seq.)
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)
Subpart Q	Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)
Subpart R	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations (ref. 40 CFR 63.420 et seq.)
Subpart S	Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)
Subpart T	Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)
Subpart U	Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)
Subpart W	Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)
Subpart X	Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)
Subpart Y	Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)
Subpart AA	Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)
Subpart BB	Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC	Petroleum Refineries (ref. 40 CFR 63.640 et seq.)
Subpart DD	Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)
Subpart EE	Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)
Subpart GG	Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)
Subpart HH	Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)
Subpart II	Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)
Subpart JJ	Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)
Subpart KK	Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)
Subpart LL	Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)
Subpart MM	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfitite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)
<u>Subpart NN</u>	<u>Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)</u>
Subpart OO	Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)
Subpart PP	Containers (ref. 40 CFR 63.920 et seq.)
Subpart QQ	Surface Impoundments (ref. 40 CFR 63.940 et seq.)
Subpart RR	Individual Drain Systems (ref. 40 CFR 63.960 et seq.)
Subpart SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)
Subpart TT	Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)
Subpart UU	Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)
Subpart VV	Oil-Water Separators and Organic - Water Separators (ref. 40 CFR 63.1040 et seq.)
Subpart WW	Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)
Subpart XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)
Subpart YY	Generic Maximum Achievable Control Technology (ref. 40 CFR 63.1100 et seq.)
Subpart CCC	Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)
Subpart DDD	Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)
Subpart EEE	Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)
Subpart GGG	Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)
Subpart HHH	Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)
Subpart III	Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)
Subpart JJJ	Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)
Subpart LLL	Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)
Subpart MMM	Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)
Subpart NNN	Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)
Subpart OOO	Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)
Subpart PPP	Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)
Subpart QQQ	Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR	Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)
Subpart TTT	Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)
Subpart UUU	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)
Subpart VVV	Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)
Subpart XXX	Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)
Subpart AAAA	Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)
Subpart CCCC	Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)
Subpart DDDD	Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)
Subpart EEEE	Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)
Subpart FFFF	Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)
Subpart GGGG	Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)
Subpart HHHH	Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)
Subpart IIII	Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)
Subpart JJJJ	Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)
Subpart KKKK	Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)
Subpart MMMM	Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)
Subpart NNNN	Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)
Subpart OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)
Subpart PPPP	Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)
Subpart QQQQ	Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)
Subpart RRRR	Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)
Subpart SSSS	Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)
Subpart TTTT	Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)
Subpart UUUU	Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)
Subpart VVVV	Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)
Subpart WWWW	Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX	Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)
Subpart YYYY	Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)
<u>Subpart ZZZZ</u>	<u>Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)</u> <i>Title V Sources Only</i>
Subpart AAAAA	Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)
Subpart BBBBB	Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)
Subpart CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)
<u>Subpart DDDDD</u>	<u>Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)</u>
Subpart EEEEE	Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)
Subpart FFFFF	Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)
Subpart GGGGG	Site Remediation (ref. 40 CFR 63.7880 et seq.)
Subpart HHHHH	Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)
Subpart IIIII	Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)
Subpart JJJJJ	Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)
Subpart KKKKK	Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)
Subpart LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)
Subpart MMMMM	Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)
Subpart NNNNN	Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)
Subpart PPPPP	Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)
Subpart QQQQQ	Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)
Subpart RRRRR	Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)
Subpart SSSSS	Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)
Subpart TTTTT	Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)
<u>Subpart UUUUU</u>	<u>Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)</u>
Subpart WWWWW	Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)
Subpart YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart <u>ZZZZZ</u>	Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)
Subpart BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)
Subpart CCCCCC	Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)
Subpart DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)
Subpart EEEEEE	Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)
Subpart FFFFFF	Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)
Subpart GGGGGG	Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)
<u>Subpart HHHHHH</u>	<u>Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.) Title V Sources Only</u>
<u>Subpart JJJJJJ</u>	<u>Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.) Title V Sources Only</u>
Subpart LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)
Subpart MMMMMM	Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)
Subpart NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)
Subpart OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)
Subpart PPPPPP	Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)
Subpart QQQQQQ	Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)
Subpart RRRRRR	Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)
Subpart SSSSSS	Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)
Subpart TTTTTT	Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)
<u>Subpart VVVVVV</u>	<u>Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)</u>
Subpart WWWWWW	Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)
<u>Subpart XXXXXX</u>	<u>Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.) Title V Sources Only</u>
<u>Subpart YYYYYY</u>	<u>Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)</u>
<u>Subpart ZZZZZZ</u>	<u>Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)</u>
<u>Subpart AAAAAAA</u>	<u>Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)</u>

<u>Subpart</u> <u>BBBBBBB</u>	<u>Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)</u>
<u>Subpart</u> <u>CCCCCC</u>	<u>Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)</u>
<u>Subpart</u> <u>DDDDDD</u>	<u>Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)</u>
<u>Subpart</u> <u>EEEEEE</u>	<u>Gold Mine Ore Processing and Production Area Source Category (ref. 40 CFR 63.11640 et seq.)</u>
<u>Subpart</u> <u>HHHHHH</u>	<u>Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 63.11860 et seq.)</u>
Appendix A	Test Methods (ref. 40 CFR 63, Appendix A)
Appendix B	Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)
Appendix C	Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)
Appendix D	Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)
Appendix E	Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

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

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

WSR 16-20-003
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UT-160196, General Order R-587—Filed September 22, 2016,
8:50 a.m., effective October 23, 2016]

In the matter of amending and repealing certain rules in chapter 480-120 WAC, Relating to the Washington telephone assistance plan (WTAP) and to the Washington Exchange Carriers Association (WECA).

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 16-11-096, filed with the code reviser on May 18, 2016. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, 80.36.135, and 80.36.440.

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes),

summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends and repeals the following sections of the Washington Administrative Code: Amending WAC 480-120-021 Definitions, 480-120-061 Refusing service, 480-120-103 Application for service and 480-120-174 Payment arrangements; and repealing WAC 480-120-259 Washington telephone assistance program and 480-120-352 Washington Exchange Carrier Association.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on March 2, 2016, at WSR 16-06-119.

8 The statement advised interested persons that the commission was considering entering a rule making as a follow-up to the rule making in Docket UT-140680. The commission repealed WAC 480-120-440 in that proceeding, and the rule contained important service outage restoral requirements, as well as notice requirements related to planned outages. Other rules in chapter 480-120 WAC contain cross references to rules that were repealed. WTAP no longer exists, and rules related to that program are moot. Similarly, WECA has been discontinued because the commission now handles WECA's primary function of administering a universal service fund

pursuant to rules in chapter 480-123 WAC, so WAC 480-120-352 is unnecessary. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all parties interested in the previous rule-making Docket UT-140680, all registered telecommunications companies, and the commission's list of telecommunications attorneys. Pursuant to the notice, the commission received written comments on April 4, 2016.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on May 18, 2016, at WSR 16-11-096. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 16-11-096 at 9:30 a.m., Tuesday, July 12, 2016, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The date of the hearing was subsequently changed to Monday, July 18, 2016, under Notice No. WSR 16-13-097. The notice provided interested persons the opportunity to submit written comments to the commission.

10 WRITTEN COMMENTS: The commission received written comments from the Washington Independent Telecommunications Association (WITA), Frontier Communications NW, Inc. (Frontier), and CenturyLink. Summaries of all written comments and commission staff's responses are contained in the commission staff (staff) memorandum included in Appendix A, shown below, and made part of, this order.

11 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Monday, July 18, 2016, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Ann E. Rendahl. The commission heard oral comments from staff, CenturyLink, Frontier, and WITA, all of which repeated and expanded on the written comments.

12 SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED: Written and oral comments suggested changes to the proposed rules. The suggested changes and staff's response are included in Appendix A. The commission agrees with and adopts the responses to the suggested changes in that appendix except with respect to adoption of WAC 480-120-441.¹ The commission concurs with CenturyLink, Frontier, and WITA that the commission should not adopt that rule at this time.

¹ The commission also modifies for clarity the revised language WITA proposed to the definition of "Order date" in WAC 480-120-021.

13 The commission agrees with the commenters that the record in Docket UT-140680 does not support the conclusion that the commission inadvertently repealed WAC 480-120-440 in that prior rule making. The adoption order identifies, although does not discuss, that rule, and staff included the rule in its original proposal and responded to comments from one commenter who objected to the rule's repeal. The commission may not have fully considered the impact of repealing that rule, but we cannot say that its repeal was due to a ministerial error. Accordingly, we must determine whether the record demonstrates a need to readopt that rule.² We conclude that it does not.

² CenturyLink observes that the CR-101 expressly states that the commission proposed to readopt WAC 480-120-440 because the commission inadvertently repealed it, but CenturyLink concedes that this statement does not preclude the commission from adopting proposed WAC 480-120-441 on other grounds. TR 16:21 - 17:6.

14 CenturyLink, Frontier, and WITA contend that readopting WAC 480-120-440 is inconsistent with the commission's past recognition of the competitiveness of the telecommunications market in Washington. Frontier and CenturyLink point to the commission's grant of minimal or reduced regulation for both companies and to the lack of any commission oversight over wireless and voice over internet protocol (VoIP) companies. These commenters argue that the legacy restrictions in WAC 480-120-441 are unnecessary when dissatisfied customers have the option to obtain service from other providers and that adoption of that rule would unfairly hobble them but not their competitors.

15 We do not find these arguments persuasive. Minimal or reduced regulation does not mean no regulation. All of the commission's rules governing telecommunications companies would be needlessly constraining if we accepted the commenters' position. We decline to do so. The commission has a statutory obligation to ensure that landline telephone companies provide fair, just, and reasonable services to consumers in this state. The commission's lack of jurisdiction to establish and enforce service quality standards for wireless and nomadic VoIP service providers does not absolve the commission of that responsibility. We will not facilitate a race to the bottom of consumer protection.

16 More compelling is the information that CenturyLink, and to a lesser extent Frontier and WITA, provided in response to staff's figures on the increased number of outage complaints since the commission repealed WAC 480-120-440. Most, if not all, of those outages are attributable to adverse weather conditions and thus would have been excluded under that rule if it had still been in effect. All of the commenters, moreover, provided information demonstrating that they have not reduced staffing levels for technicians qualified to restore basic telephone service during that time. Staff also explained that it has relied on WAC 480-120-411 in the absence of WAC 480-120-440 to require that companies "promptly" restore service in the event of an outage. Based on the information before us, we do not believe that the record sufficiently warrants readoption of the repealed rule, at least in that form.

17 We nevertheless find that staff has raised concerns that merit further consideration. Fair, just, and reasonable telecommunications service includes an obligation to restore service following an outage as expeditiously as practicable. As staff points out, other states have rules that reflect this principle.³ The commission continues to receive complaints from customers that their service provider is not satisfying this requirement, and many of those consumers do not have a competitive alternative. While we are not prepared to readopt former WAC 480-120-440, we are not satisfied to rely solely on WAC 480-120-411 to address this issue. The existing rule's requirement that problems be remedied "promptly," for example, provides insufficient guidance to both companies and consumers on what constitutes a reasonable time in which providers must restore service.

³ See Appendix A, staff memo at 4 (describing the applicable rules in four other states).

18 Accordingly, we will open another rule making to consider the appropriate standard for restoring regulated telecommunications service following an outage. Pending the conclusion of that rule making, we find that, in the absence of extenuating circumstances, forty-eight hours is an appropriate benchmark for determining whether a company has "promptly" repaired or restored service problems in compliance with WAC 480-120-411. Extenuating circumstances include, but are not necessarily limited to, severe weather, natural disasters, or other causes beyond the company's control for as long as those conditions persist.

19 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and repeal the rules as proposed in the CR-102 at WSR 16-11-096 with the changes described below.

20 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 16-11-096:

WAC 480-120-021, definition of "**Order date**," second sentence, strike "the actions are completed by the applicant if" and substitute "those actions have been completed and the applicant notifies the company of that completion unless" and strike the following "not."

WAC 480-120-174, subsection (2), strike all references to the Washington telephone assistance program or WTAP.

WAC 480-120-441, not adopted.

21 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that the WAC sections listed in paragraph 6 above should be amended or repealed to read as set forth in Appendix B, as rules of the commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 2.

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

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

ORDER

22 THE COMMISSION ORDERS:

23 The commission amends and repeals the sections in chapter 480-120 WAC to read as set forth in Appendix B, as rules of the commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

24 This order and the rule set out below, after being recorded in the order register of the commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, September 22, 2016.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Ann E. Rendahl, Commissioner

Appendix A (Commission Staff Memorandum)

TO: Dave Danner, Chairman; Phil Jones, Commissioner; Ann Rendahl, Commissioner.

FROM: John Cupp, Greg Kopta, Alice Fiman, Jennifer Cameron-Rulkowski, Jing Roth.

DATE: July 12, 2016.

SUBJECT: Rule making to consider amending, adopting, and repealing certain rules in chapter 480-120 WAC, Telephone companies.

RE: Adoption hearing, July 18, 2016.

RECOMMENDATION: Staff recommends that the commission adopt the revised rules as published in the CR-102 filed with the code reviser. Staff also recommends additional changes to WAC 480-120-021 and 480-120-174 as described in this memo.

BACKGROUND: On March 2, 2016, the commission filed a CR-101 to consider reinstating WAC 480-120-440 (as WAC 480-120-441), which was repealed effective April 26, 2015, in UT-140680; to remove or amend references to rules that were repealed or moved in UT-140680; to remove rules and references related to WTAP; and to remove a rule related to WECA.

On March 4, the commission issued a notice of opportunity for the telecommunications industry to file written comments regarding the proposed rule changes. Interested persons filed comments on April 4, 2016.

On May 18, the commission filed a CR-102 with the office of the code reviser. On May 20, the commission issued a CR-102 notice of proposed rule making and drafts reflecting the changes proposed in the CR-101. Comments were due June 20.

On June 15, CenturyLink requested the deadline for filing comments be extended to July 5. The commission granted the company's request.

STAKEHOLDER COMMENTS: The commission received comments in response to the CR-102 from three stakeholders: CenturyLink, Frontier, and WITA. None of the stakeholders oppose the proposals to repeal and amend the existing rules specified in the CR-102. The commenting stakeholders, however, disagree with the proposal to reinstate WAC 480-120-440. In addition, CenturyLink continues to propose WAC 480-120-133 be repealed, and WITA recommends a change in WAC 480-120-021 related to the definition of "Order date." WITA also continues to recommend the commission take action to conform rules to "steps taken by the FCC in Order No. 15-166."

COMMENTS REGARDING THE REINSTATEMENT OF WAC 480-120-440:

1. CenturyLink: "... two months of increased complaints during some of the worst weather events in recent history do not justify adoption of this rule"

RESPONSE: The data used to show the spike in violations was based on complaints from January 2013 through March 2016. The majority of the violations during this period were noted during the months following the windstorm that hit Spokane in November 2015. These restoral violations were significantly higher than the number staff recorded from the winter storm of January 2012. In January 2012, western Washington experienced a severe winter storm that resulted in a state of emergency also being declared. During the first six months of 2012, staff recorded a total of only four violations of WAC 480-120-440 against CenturyLink entities, including Qwest.

The data that CenturyLink provided in response to the CR-102 indicates a total of one hundred thirty-six outage complaints from May 2015 through April 2016. This is a significant increase from the previous year when CenturyLink identified thirty outage complaints. Staff believes that the repeal of WAC 480-120-440 played a role in the increased number of violations in the April 2015 through March 2016 data.

2. CenturyLink: Force majeure events, not the repeal of WAC 480-120-440, caused longer repair intervals.

RESPONSE: Since the repeal of WAC 480-120-440, staff has used WAC 480-120-411 to govern all outage situations, and that rule does not take into account force majeure events or major outages. The forty-eight hour restoral requirement in WAC 480-120-440, on the other hand, does not apply if the out-of-service condition is part of a major outage, if the company is physically obstructed from restoring service, or because of force majeure. If the majority of outages since the repeal of WAC 480-120-440 have been the result of force majeure as CenturyLink claims, that rule (had it been in effect) would have resulted in fewer violations.

Staff believes reinstatement of WAC 480-120-440 will benefit the companies by excluding major outages, force majeure events, and situations of physical obstruction. It will benefit staff by separating maintenance related issues and other outage events for compliance tracking purposes. It will benefit consumers who do not or cannot have wireless or VoIP service by providing a specific standard for restoral, especially those customers with security systems or medical alert devices.

3. CenturyLink: "... some repairs simply take more than 48 hours to complete."

RESPONSE: Staff understands this. All of the complaints included in the data in this rule making are informal complaints. As such, all violations in the data are alleged violations, which are considered technical assistance. Only in a formal proceeding would violations result in penalties. Staff believes the nature of the needed repair work would be taken into consideration in the event of a formal investigation.

4. CenturyLink: "... the number of complaints overall is still very small and declining"

RESPONSE: Complaint records show that CenturyLink complaints are increasing annually, as follows:

2012	2013	2014	2015	2016
301	354	382	530	227

While complaint numbers are much lower than they were fifteen years ago, the current trend does not show a decline.

5. CenturyLink: The rule will not enhance compliance or change behaviors.

RESPONSE: Staff cannot guarantee that the company will comply with the rule, or change its behavior if the rule is reinstated. Staff believes company behavior has changed since the rule was repealed. Staff reviewed a sampling of complaints with restoral violations that were opened after the rule was repealed and found sixteen complaints where the company received outage calls and gave repair commitment dates over ten days beyond the forty-eight hour limit, several were twenty or more days over the limit. Nearly all the commitment times of over ten days were from December 2015 through February 2016; however, staff did not include any complaints from eastern Washington in the sampling.

A search of complaints with restoral violations opened before WAC 480-120-440 was repealed found occasional commitment dates beyond forty-eight hours, but none ten days beyond the limit.

6. CenturyLink: The rule is not necessary. If it were, other states and other utilities would have a similar rule. No other state in CenturyLink's serving area has a rule like the proposed rule.

RESPONSE: WAC 480-120-440 is necessary. In its place, staff has used WAC 480-120-411, which is a network maintenance rule, in all outage situations. Not all out-of-service conditions are related to network maintenance. Using a maintenance rule to track outages makes it difficult for staff to differentiate issues related to poor maintenance from outages caused by unforeseen events.

Other states have rules similar to WAC 480-120-440. For example:

Idaho Telephone Customer Relations Rules: 31.41.01 502.01 requires restoral of eighty percent of outages within forty-eight hours after report of the outage. If the outage creates an emergency for the customer, service must be restored within sixteen hours. More time is allowed when outages are reported on Fridays, Saturdays, or Sundays.

Montana Administrative Rules: 38.5.3371(7) says ninety percent of service trouble reports shall be cleared within twenty-four hours, excluding Sunday. Exceptions are allowed for lack of access to premises or "where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers."

Texas Administrative Code: Substantive Rules Chapter 26.54 Subchapter C (6)(D), requires at least ninety percent of out-of-service reports to be cleared within eight working hours, with exceptions for unavoidable casualties and acts of God affecting large groups of customers.

Code of Colorado Regulations: 4 CCR 732-2 2341 (b)(I) require eighty-five percent of out-of-service reports for each wire center be cleared within twenty-four hours.

7. Frontier: Reinstating the rule would discriminate against ILECs who face a hyper-competitive industry.

RESPONSE: Staff understands that wireless and unregistered VoIP providers are not subject to commission rules. WAC 480-120-440 applied to all ILECs and CLECs, many with customers who have no access to wireless or VoIP services. Staff believes these customers rely on rules that ensure consistently reliable service. Relaxation of regulation should not discriminate against these customers.

8. WITA: A history that shows no violations does not support reinstating a rule for WITA's member companies.

RESPONSE: WAC 480-120-440 would apply to all regulated telecommunications companies, not only WITA members.

COMMENTS REGARDING WAC 480-120-133 AND 480-120-021

9. CenturyLink: WAC 480-120-133 should be repealed because it is outdated and unnecessary.

RESPONSE: WAC 480-120-133 is not within the scope of the CR-102, and thus the commission cannot consider it in this rule making. Even if that were not the case, the rule addresses "Response time for calls to business office or repair center during regular business hours." The rule explains how quickly a company representative or automated system must answer a call, and how quickly an automated system must provide an option for a live representative. Staff does not agree that this rule is outdated or unnecessary. Hold times are an ongoing source of frustration for consumers. Relaxing the requirements in this rule is likely to exacerbate the problem.

10. WITA: The definition of "Order date" in WAC 480-120-021 says, "when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service." This language is potentially problematic because the company may not be aware that an applicant has completed the required actions. The company proposes the following language: "when specific actions are required of the applicant, following completion of the required actions, the order date becomes the date on which the company receives notice from the applicant of such completion, if the company has not already installed or activated service."

RESPONSE: Staff supports this change.

11. WITA: WITA recommends the commission take action to conform its rules to "steps taken by the FCC in Order No. 15-166."

RESPONSE: As even WITA acknowledges, these rules are outside the scope of the CR-102, so the commission cannot consider them in this rule making.

ADDITIONAL RULE AMENDMENT TO WAC 480-120-174: Staff recommends a housekeeping change that was not previously proposed. In a previous telecommunications rule making, in Docket UT-140680, WAC 480-120-174 was amended to remove a reference to WTAP. A reference to that information is now obsolete and should be deleted.

CONCLUSION: Staff recommends that the commission adopt the revised rules as shown in Attachment A.

cc: Steve King, Executive Director and Secretary;
Pat Hazzard, Director, Safety and Consumer Protection;
Greg Kopta, Administrative Law Division;
Brian Thomas, Director, Policy;
Bridgit Feeser, Assistant Director, Consumer Protection;
Jing Roth, Assistant Director, Telecommunications;

Alice Fiman, Consumer Protection Manager; and
Jennifer Cameron-Rulkowski, Attorney General's
Office.

ATTACHMENT A

- WAC 480-120-440 should be reinstated in its entirety.

Staff's remaining recommendations are not disputed. Staff recommends changes to remove and amend rules as follows:

- WAC 480-120-021 Definitions, definition of "Order date" refers to WAC 480-120-112. This reference should be removed.
- WAC 480-120-061 (1)(d)(ii), Refusing service, refers to WAC 480-120-132, which is now WAC 480-120-104 (5). This reference should be amended accordingly.
- WAC 480-120-103(2), Application for service, refers to WAC 480-120-105 and 480-120-112, which were repealed in a previous rule making. Both references should be removed.
- WAC 480-120-021 Definitions, "Washington telephone assistance program" should be removed.
- WAC 480-120-174(2), Payment arrangements, this subsection describes the restoral of service to WTAP subscribers. This subsection should be removed.
- WAC 480-120-259, Washington telephone assistance plan, should be repealed in its entirety.
- WECA has been discontinued. Staff recommends WAC 480-120-352 be repealed accordingly.

These recommended changes were not in the CR-102:

- WAC 480-120-021 Definitions, in addition to changes listed above, "Order date" should be amended to reflect changes as recommended by WITA.
- WAC 480-120-174(2), Payment arrangements, a reference to subsection (2) is obsolete and should be removed.

Appendix B

AMENDATORY SECTION (Amending WSR 15-08-043, filed 3/26/15, effective 4/26/15)

WAC 480-120-021 Definitions. The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"Access charge" means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"Access line" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"Affiliate" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"Affiliated interest" means a person or corporation as defined in RCW 80.16.010.

"Ancillary services" means all local service features excluding basic service.

"Applicant" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"Average busy hour" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Basic service" means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

"Business" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"Business office" means an office or service center provided and maintained by a company.

"Business service" means service other than residential service.

"Busy season" means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Call aggregator" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

"Category of service" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

"Central office" means a company facility that houses the switching and trunking equipment serving a defined area.

"Centrex" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

"Class A company" means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"Class B company" means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"Commercial mobile radio service (CMRS)" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

"Commission (agency)" in a context meaning a state agency, means the Washington utilities and transportation commission.

"Company" means any telecommunications company as defined in RCW 80.04.010.

"Competitively classified company" means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

"Customer" means a person to whom the company is currently providing service.

"Customer premises equipment (CPE)" is equipment located on the customer side of the SNI (other than a company) and used to originate, route, or terminate telecommunications.

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

"Discontinue; discontinuation; discontinued" means the termination or any restriction of service to a customer.

"Drop facilities" means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

"Due date" means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

"Eligible telecommunications carrier (ETC)" means a carrier designated as an ETC pursuant to 47 U.S.C. Sec. 214 (e).

"Emergency response facility" means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

"Exchange" means a geographic area established by a company for telecommunications service within that area.

"Extended area service (EAS)" means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

"Facility or facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

"Force majeure" means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and

other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

"Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"Interexchange company" means a company, or division thereof, that provides long distance (toll) service.

"Interoffice facilities" means facilities connecting two or more telephone switching centers.

"InterLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

"IntraLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

"Local access and transport area (LATA)" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Local calling area" means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

"Local exchange company (LEC)" means a company providing local exchange telecommunications service.

"Major outages" means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

"Missed commitment" means orders for exchange access lines for which the company does not provide service by the due date.

"Order date" means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date ~~((the actions are completed by))~~ those actions have been completed and the applicant ((if)) notifies the company of that completion unless the company has ((not)) already installed or activated service.

~~((When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff.))~~

"Pay phone" or "pay telephone" means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

"Pay phone services" means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

"Pay phone service provider (PSP)" means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

"Payment agency" means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

"Person" means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

"Prior obligation" means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

"Proprietary" means owned by a particular person.

"Provision" means supplying telecommunications service to a customer.

"Public access line (PAL)" means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

"Public safety answering point (PSAP)" means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

"Radio communications service company" has the meaning found in RCW 80.04.010, except that for the purposes of this section it includes only those companies providing two-way voice communication as a common carrier.

"Residential service" means basic service to a household.

"Restricted basic service" means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

"Results of operations" means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

"Service interruption" means a loss of or impairment of service that is not due to, and is not, a major outage.

"Service provider" means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

"**Special circuit**" means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

"**Standard network interface (SNI)**" means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

"**Station**" means a telephone instrument installed for a customer to use for toll and exchange service.

"**Subscriber list information (SLI)**" means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"**Subsidiary**" means any company in which the telecommunications company owns directly or indirectly five percent or more of the voting securities, unless the telecommunications company demonstrates it does not have control.

"**Support structure**" means the trench, pole, or conduit used to provide a path for placement of drop facilities.

"**Telecommunications service**" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"**Telemarketing**" means contacting a person by telephone in an attempt to sell one or more products or services.

"**Toll restriction**" or "**toll restricted**" means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

"**Traffic**" means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

"**Trouble report**" means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

"**Trunk**" means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

~~("Washington telephone assistance program" means the program of local exchange service discounts administered by the department.)~~

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-061 Refusing service. (1) A company may refuse to connect with, or provide service to, an applicant under the following conditions:

(a) When service will adversely affect the service to existing customers.

(b) When the installation is considered hazardous.

(c) When the applicant has not complied with commission rules, company tariff, or rates, terms and conditions pursuant to competitive classification, and state, county, or municipal codes concerning the provision of telecommunications service such as building and electrical codes.

(d) When the company is unable to substantiate the identity of the individual requesting service.

(i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification.

(ii) Company business offices and payment agencies, required under WAC ((480-120-132)) 480-120-104(5) and 480-120-162, must provide a means for applicants to provide identification at no charge to the applicant.

(e) When the applicant has previously received service from the company by providing false information, including false statements of credit references or employment, false statement of premises address, or use of an alias or false name with intent to deceive, until the applicant corrects the false information to the satisfaction of the company.

(f) When the applicant owes an overdue, unpaid prior obligation to the company for the same class of service, until the obligation is paid or satisfactory arrangements are made.

(g) When the applicant requests service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address and the company determines, based on objective evidence, that the applicant has cooperated with the prior customer with the intent to avoid payment. However, a company may not deny service if a former customer with an overdue, unpaid prior obligation has permanently vacated the address.

(h) When all necessary rights of way, easements, and permits have not been secured. The company is responsible for securing all necessary public rights of way, easements, and permits, including rights of way on every highway as defined in RCW 36.75.010(11) or created under RCW 36.75.070 or 36.75.080. The applicant is responsible for securing all necessary rights of way or easements on private property, including private roads or driveways as defined in RCW 36.75.010(10). A private road or driveway is one that has been ascertained by the company not to be public.

(2) A company may not withhold or refuse to release a telephone number to a customer who is transferring service to another telecommunications company within the same rate center where local number portability has been implemented.

(3) A telecommunications company must deny service to a nonregistered telecommunications company that intends to use the service requested to provide telecommunications for hire, sale, or resale to the general public within the state of Washington. Any telecommunications company requesting service from another telecommunications company must state in writing whether the service is intended to be used for intrastate telecommunications for hire, sale, or resale to the general public. If the service is intended for hire, sale, or resale on an intrastate basis, the company must certify in writing, in the same manner as required by RCW 9A.72.085,

that it is properly registered with the commission to provide the service.

AMENDATORY SECTION (Amending WSR 08-19-001, filed 9/3/08, effective 10/4/08)

WAC 480-120-103 Application for service. (1) When contacted by an applicant, or when a company contacts a person, a company must:

(a) Accept and process applications when an applicant for service for a particular location has met all tariff requirements and applicable commission rules;

(b) Establish the due date as the date requested by the applicant but is not required to establish a due date that is fewer than seven business days after the order date. If the company establishes a due date other than the date requested by the applicant, it must inform the applicant of the specific date when service will be provided or state that an estimated due date will be provided within seven business days as required by subsection (2) of this section; and

(c) Maintain a record in writing, or in electronic format, of each application for service, including requests for a change of service.

(2) If the company does not provide the applicant with a due date for installation or activation at the time of application as required in subsection (1)(b) of this section, the company must state the reason for the delay. Within seven business days of the date of the application, the company must provide the applicant with an estimated due date for installation or activation. ~~((The standards imposed by WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services) are not altered by this subsection.))~~

(3) When the company informs the customer that installation of new service orders requires on-premises access by the company, the company must offer the customer an opportunity for an installation appointment that falls within a four-hour period.

(4) When the application for service requires an extension of service as defined in WAC 480-120-071 (Extension of service), the requirement of subsection (1)(b) of this section does not apply.

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

WAC 480-120-174 Payment arrangements. (1) **General.** Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first installment of a deposit is paid as provided for in WAC 480-120-122 (Establishing credit—Residential services).

(2) **Restoring service based on ~~((Washington telephone assistance program (WTAP) or))~~ federal enhanced**

tribal lifeline program eligibility. Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service—Company initiated) if the customer was not a participant in ~~((either the Washington telephone assistance program (WTAP) or))~~ the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in ~~((WTAP or))~~ the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this subsection, a customer must establish eligibility for ~~((either WTAP or))~~ the federal enhanced tribal lifeline program, agree to continuing participation in ~~((WTAP or))~~ the federal enhanced tribal lifeline program, and agree to ((pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020 (Washington telephone assistance program rate), agree to)) toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.

In the event a customer receiving service under this subsection fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.

(3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges or over a longer period than described in this rule as long as both the company and the customer agree to the payment arrangement. Longer payment arrangements as described in this subsection satisfy the requirements in subsection (1) or (2) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-259 Washington telephone assistance program.

WAC 480-120-352 Washington Exchange Carrier Association (WECA).

WSR 16-20-017 PERMANENT RULES OLYMPIC REGION CLEAN AIR AGENCY

[Filed September 26, 2016, 9:19 a.m., effective October 27, 2016]

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

Purpose: Adoption of the federal air regulations allows Olympic Region Clean Air Agency (ORCAA) to directly enforce these regulations. It will also allow ORCAA to seek delegation from the United States Environmental Protection Agency (EPA) to enforce the federal air regulations on behalf

of EPA which lessens the reporting burden on businesses within our jurisdiction.

Citation of Existing Rules Affected by this Order: Repealing ORCAA Regulations Rule 8.16; and amending ORCAA Regulations Rule 6.1, Rule 6.1.1, Rule 8.14, Rule 8.15.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 16-15-085 on July 19, 2016.

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

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

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

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

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

Date Adopted: September 14, 2016.

Francea L. McNair
Executive Director

NEW SECTION

RULE 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 2016.

AMENDATORY SECTION

RULE 6.1 NOTICE OF CONSTRUCTION REQUIRED

(a) Approval of a Notice of Construction (NOC) Application required. It shall be unlawful for any person to cause or allow the following actions unless a "Notice of Construction (NOC)" application has been filed with and approved by the Agency, except for those actions involving stationary sources excluded under Rule 6.1 ~~((e))~~(b) and ~~((f))~~(c):

(1) Construction, installation, or establishment of any stationary source; or

(2) Modification to any existing stationary source.

~~((b) Projects not eligible for exemptions. Any exemption provided in Rule 6.1 (e) or (d) shall not apply to:~~

~~(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Part AAA, (New Residential Wood Heaters). Ecology is responsible for issuing notices of construction to projects subject to Subpart BB (Kraft Pulp Mills) and Subpart S (Primary Aluminum Reduction Plants).~~

~~(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for~~

~~asbestos demolition and renovation projects subject to 40 CFR 61.145.~~

~~(3) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories).~~

~~(4) Any project that qualifies as a new major stationary source, or a major modification.~~

~~(5) Any modification to a stationary source that requires an increase either in a plant-wide cap or in unit specific emissions limit.)~~

~~(b) ~~((e))~~ Exemption provided Notice of Intent to Operate. An NOC application and prior approval by the Agency is not required prior to construction, installation, establishment or modification of the following types of stationary sources, provided that a complete "Notice of Intent to Operate" has been filed with the Agency in accordance with Rule 6.1.1:~~

~~(1) Temporary Portable Stationary Sources. Temporary portable stationary sources that have been previously approved by Ecology or a local air pollution control authority in the State of Washington through an NOC application.~~

~~(2) Stationary Sources based on Potential to Emit. Any stationary source that:~~

~~(i) Will not result in emission of any toxic air pollutants listed in WAC 173-460-150 (Class A Toxic Air Pollutants); and,~~

~~(ii) Will have a combined potential to emit from all emission units less than:~~

~~(A) 0.5 tons per year of any criteria pollutant; and,~~

~~(B) 1.0 tons per year of total criteria pollutants and VOC combined; and,~~

~~(C) 0.005 tons per year of lead; and,~~

~~(D) 100 pounds per year of any toxic air pollutant listed in WAC 173-460-160 (Class B Toxic Air Pollutants); and,~~

~~(E) 1.0 tons per year of ozone depleting substances combined.~~

~~(c) ~~((f))~~ Categorical Exemptions. An NOC application and prior approval by the Agency is not required prior to construction, installation, establishment or modification of stationary sources in the following stationary source categories, provided that sufficient records are kept to document the exemption:~~

~~Maintenance/construction:~~

~~(1) Cleaning and sweeping of streets and paved surfaces;~~

~~(2) Concrete application, and installation;~~

~~(3) Dredging wet spoils handling and placement;~~

~~(4) Paving application and maintenance, excluding asphalt plants;~~

~~(5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine housekeeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);~~

~~(6) Plumbing installation and plumbing protective coating application associated with plant maintenance activities;~~

~~(7) Roofing application;~~

~~(8) Insulation application and maintenance, excluding products for resale;~~

~~(9) Janitorial services and consumer use of janitorial products;~~

~~(10) Asphalt laying equipment including asphalt-roofing operations (not including manufacturing or storage);~~

(11) Blast cleaning equipment that uses a suspension of abrasive in liquid water;

(12) Spray painting or blasting equipment used at temporary locations to clean or paint bridges, water towers, buildings, or similar structures.

Storage Tanks:

(13) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

(14) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(15) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(16) Process and white water storage tanks;

(17) Storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cft);

(18) Storage tanks of a capacity of 10,000 gallons or less, with lids or other appropriate closure, and for the storage of materials containing organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC);

(19) Storage tanks of a capacity of 40,000 gallons or less, with lids or other appropriate closure, used for the storage of organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC), with a true vapor pressure less than 0.01 kPa (0.002 psia) (0.0001 atm);

(20) Storage tanks of a capacity of 40,000 gallons or less used for the storage of butane, propane, or liquefied petroleum gas;

(21) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(22) Storage tanks used exclusively for storage of diesel fuel;

(23) Loading and unloading equipment used exclusively for the storage tanks exempted under this rule.

Combustion:

(24) Fuel burning equipment (not including incinerators) that:

(i) is used solely for a private dwelling serving five families or less; or

(ii) has a maximum heat input rate of 5 MMBtu/hr or less if burning natural gas, propane, or LPG; or

(iii) has a maximum heat input rate of 0.5 MMBtu/hr or less if burning waste-derived fuels; or

(iv) has a maximum heat input rate of 1 MMBtu/hr or less if burning recycled or used oil per the requirements of RCW 70.94.610; or

(v) has a maximum heat input rate of 1 MMBtu/hr or less if burning any other type of fuel and with less than or equal to 0.05% sulfur by weight.

(25) All stationary gas turbines with a rated heat input <10 million Btu per hour.

(26) Stationary internal combustion engines having rated capacity:

(i) <50 horsepower output; or

(ii) <500 horsepower and used only for standby emergency power generation.

(27) All nonroad engines subject to 40 CFR Part 89.

Material handling:

(28) Storage and handling of water based lubricants for metal working where organic content of the lubricant is <10%;

(29) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallons, material with initial atmospheric boiling point not less than 150EC or vapor pressure not more than 5 mm Hg @ 21EC, with lids or other appropriate closure.

Water treatment:

(30) Septic sewer systems, not including active wastewater treatment facilities;

(31) NPDES permitted ponds and lagoons used solely for the purpose of settling and suspended solids and skimming of oil and grease;

(32) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(33) Process water filtration system and demineralizer vents;

(34) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(35) Demineralizer tanks;

(36) Alum tanks;

(37) Clean water condensate tanks;

(38) Oil/water separators, except those at petroleum refineries;

(39) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(40) Municipal sewer systems, including wastewater treatment plants and lagoons with a design capacity of one million gallons per day or less, provided that they do not use anaerobic digesters, chlorine disinfections or sewage sludge incinerators.

Environmental chambers and laboratory equipment:

(41) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(42) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(43) Installation or modification of a single laboratory fume hood;

(44) Laboratory calibration and maintenance equipment.

Monitoring/quality assurance/testing:

(45) Equipment and instrumentation used for quality control/assurance or inspection purposes;

(46) Hydraulic and hydrostatic testing equipment;

(47) Sample gathering, preparation and management;

(48) Vents from continuous emission monitors and other analyzers.

Miscellaneous:

(49) Single-family residences and duplexes;

(50) Plastic pipe welding;

(51) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

- (52) Insecticide, pesticide, or fertilizer spray equipment;
- (53) Comfort air conditioning;
- (54) Flares used to indicate danger to the public;
- (55) Natural and forced air vents and stacks for bathroom/toilet activities;
- (56) Personal care activities including establishments like beauty salons, beauty schools, and hair cutting establishments;
- (57) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- (58) Tobacco smoking rooms and areas;
- (59) Noncommercial smokehouses;
- (60) Blacksmith forges for single forges;
- (61) Vehicle maintenance activities, not including vehicle surface coating;
- (62) Vehicle or equipment washing;
- (63) Wax application;
- (64) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- (65) Ozone generators and ozonation equipment;
- (66) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- (67) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- (68) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- (69) Firefighting and similar safety equipment and equipment used to train firefighters;
- (70) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- (71) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- (72) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm HG @21EC, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);
- (73) Surface coating, aqueous solution or suspension containing <1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
- (74) Cleaning and stripping activities and equipment using solutions having <1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
- (75) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.
- (76) Laundry dryers, extractors or tumblers used exclusively for the removal of water from fabric;
- (77) Residential composting facilities;
- (78) Restaurants and other retail food preparing establishments;
- (79) Routing, turning, carving, cutting and drilling equipment used for metal, wood, plastics, rubber, leather or ceramics;
- (80) Steam cleaning equipment used exclusively for that purpose;
- (81) Vacuum cleaning systems used exclusively for office or residential housekeeping;

- (82) Vacuum producing devices used in laboratory operations and vacuum producing devices that do not remove or convey air contaminants from or to another source;
- (83) Vents used exclusively for:
 - (i) Sanitary or storm drainage systems; or
 - (ii) Safety valves
- (84) Washing or drying equipment used for products fabricated from metal or glass, if no volatile organic material is used in the process.
- (85) Welding, brazing or soldering equipment;
- (86) Coffee roasters with a design capacity less than 10 pounds per batch;
- (87) Bark and soil screening operations;
- (88) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 150 tons per hour;
- (89) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 25 tons per hour.

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

AMENDATORY SECTION

Rule 6.1.1 Notice of Intent to Operate

- (a) For those sources required to submit a notice of intent to operate, a complete Notice of Intent to Operate (NOI) application shall be filed at least 15 days prior to starting operation of the source.
- (b) NOI applications shall be made on standard forms of the Agency and shall include:
 - (1) All information requested in the applicable standard forms;
 - (2) If submitting a NOI for a stationary source qualifying for the exemption based on potential to emit under Rule 6.1 ((e))(b)(2), documentation verifying the stationary source's potential to emit;
 - (3) Any additional information requested by the Agency to verify that operation of the stationary source will be in compliance with applicable air pollution control requirements; and,
 - (4) Applicable fee according to Rule 3.6.
- (c) Condition of operation. The Agency may establish enforceable conditions of operation, through issuance of a regulatory Order, as are reasonably necessary to assure compliance with applicable air pollution control requirements.
- (d) Temporary portable sources. Temporary portable sources shall also meet the requirements of Rule 6.1.7.

AMENDATORY SECTION

RULE 8.14 ADOPTION OF FEDERAL NEW SOURCE PERFORMANCE STANDARDS (NSPS)

- (a) The NSPS in 40 CFR Part 60 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 60 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) 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.

(4) Exceptions. The following sections and subparts of 40 CFR Part 60 are not adopted:

(i) Subpart B - Adoption and Submittal of State Plans for Designated Facilities;

(ii) Subpart C - Emission Guidelines and Compliance Times;

(iii) Subpart Cb - Large Municipal Waste Combustors that are Constructed on or before September 20, 1994 (Emission Guidelines and Compliance Times);

(iv) Subpart Cc - Municipal Solid Waste Landfills (Emission Guidelines and Compliance Times);

(v) Subpart Cd - Sulfuric Acid Production Units (Emission Guidelines and Compliance Times);

(vi) Subpart Ce - Hospital/Medical/Infectious Waste Incinerators (Emission Guidelines and Compliance Times);

(vii) Subpart S - Primary Aluminum Reduction Plants;

(viii) Subpart BB - Kraft Paper Mills;

(ix) Subpart AAA - New Residential Wood Heaters - as it applies to non-Title V sources;

(x) Subpart BBBB - Small Municipal Waste Combustion Units Constructed on or before August 30, 1999 (Emission Guidelines and Compliance Times);

(xi) Subpart DDDD - Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999 (Emission Guidelines and Compliance Times);

(xii) Subpart FFFF - Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004;

(xiii) Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xiv) Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xv) Subpart MMMM - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units;

(xvi) Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces - as it applies to non-Title V sources;

(xvii) Subpart UUUU - Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units; and,

(xviii) Appendix G - Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

AMENDATORY SECTION

RULE 8.15 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)

(a) The NESHAP in 40 CFR Part 61 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 61 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) 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.

(4) Exceptions. The following sections and subparts of 40 CFR Part 61 are not adopted:

(i) Subpart B - Radon from Underground Uranium Mines;

(ii) Subpart H - Radionuclide other than Radon from Dept. of Energy Facilities;

(iii) Subpart I - Radionuclide from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H;

(iv) Subpart K - Radionuclide from Elemental Phosphorus Plants;

(v) Subpart Q - Radon from Dept. of Energy Facilities;

(vi) Subpart R - Radon from Phosphogypsum Stacks;

(vii) Subpart T - Radon from Disposal Uranium Mill Tailings; and,

(viii) Subpart W - Radon from Operating Mill Tailings.

REPEALER

The following section of Olympic Region Clean Air Agency (ORCAA) Regulation, Rule 8.16, is repealed: **RULE 8.16 WOOD FIRED BOILERS**

NEW SECTION

RULE 8.17 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

(a) The NESHAP for Source Categories in 40 CFR Part 63 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 63 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 63 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) 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.

(4) Exceptions. The following sections and subparts of 40 CFR Part 63, as they apply to non-Title V sources, are not adopted:

(i) Subpart M - National Perchloroethylene Emission Standards for Dry Cleaning Facilities;

(ii) Subpart LL - National Emission Standard for Hazardous Air Pollutants for Primary Aluminum Reduction Plants;

(iii) Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production;

(iv) Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines;

(v) Subpart -BBBBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(vi) Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and,

(vii) Subpart XXXXXX - Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

NEW SECTION

RULE 8.18 ADOPTION OF FEDERAL CONSOLIDATED REQUIREMENTS FOR THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY

The Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry in Section 2.18 of 40 CFR Part 65 in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference.

NEW SECTION

**APPENDIX A
ADOPTED FEDERAL REGULATIONS AND STANDARDS**

40 CFR Part 60 - Standards of Performance for New Stationary Sources adopted by reference effective July 1, 2016.

Subpart A	General Provisions
Subpart D	Fossil-Fuel-Fired Steam Generators for which Construction is Commenced after August 17, 1971
Subpart Da	Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978
Subpart Db	Industrial-Commercial-Institutional Steam Generating Units
Subpart Dc	Small Industrial-Commercial-Institutional Steam Generating Units
Subpart E	Incinerators
Subpart Ea	Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994

Subpart Eb	Large Municipal Waste Combustors
Subpart Ec	Hospital/Medical/Infectious Waste Incinerators
Subpart F	Portland Cement Plants
Subpart G	Nitric Acid Plants
Subpart Ga	Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011
Subpart H	Sulfuric Acid Plants
Subpart I	Hot Mix Asphalt Facilities
Subpart J	Petroleum Refineries
Subpart Ja	Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After May 14, 2007
Subpart K	Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973 and prior to May 19, 1978
Subpart Ka	Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978 and prior to July 23, 1984
Subpart Kb	VOC Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984
Subpart L	Secondary Lead Smelters
Subpart M	Secondary Brass and Bronze Production Plants
Subpart N	Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973
Subpart Na	Secondary Emissions from Basic Oxygen Process Steel-making Facilities for which Construction is Commenced after January 20, 1983
Subpart O	Sewage Treatment Plants
Subpart P	Primary Copper Smelters
Subpart Q	Primary Zinc Smelters
Subpart R	Primary Lead Smelters
Subpart T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
Subpart U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants
Subpart V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants

Subpart W	Phosphate Fertilizer Industry: Triple Superphosphate Plants
Subpart X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Subpart Y	Coal Preparation Plants
Subpart Z	Ferrous Alloy Production Facilities
Subpart AA	Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974 and on or before August 17, 1983
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 7, 1983
Subpart CC	Glass Manufacturing Plants
Subpart DD	Grain Elevators
Subpart EE	Surface Coating of Metal Furniture
Subpart GG	Stationary Gas Turbines
Subpart HH	Lime Manufacturing Plants
Subpart KK	Lead-Acid Battery Manufacturing Plants
Subpart LL	Metallic Mineral Processing Plants
Subpart MM	Automobile and Light Duty Truck Surface Coating Operations
Subpart NN	Phosphate Rock Plants
Subpart PP	Ammonium Sulfate Manufacture
Subpart QQ	Graphic Arts Industry: Publication Rotogravure Printing
Subpart RR	Pressure Sensitive Tape and Label Surface Coating Standards
Subpart SS	Industrial Surface Coating: Large Appliances
Subpart TT	Metal Coil Surface Coating
Subpart UU	Asphalt Processing and Asphalt Roof Manufacture
Subpart VV	Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry
Subpart VVa	Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After November 7, 2006
Subpart WW	Beverage Can Surface Coating Industry
Subpart XX	Bulk Gasoline Terminals
Subpart AAA	New Residential Wood Heaters - Title V sources only
Subpart BBB	Rubber Tire Manufacturing Industry

Subpart DDD	VOC Emissions from Polymer Manufacturing Industry
Subpart FFF	Flexible Vinyl and Urethane Coating and Printing
Subpart GGG	Equipment Leaks of VOC in Petroleum Refineries
Subpart GGGa	Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, And On Or Before November 7, 2006
Subpart HHH	Synthetic Fiber Production Facilities
Subpart III	VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes
Subpart JJJ	Petroleum Dry Cleaners
Subpart KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
Subpart LLL	Onshore Natural Gas Processing: SO ₂ Emissions
Subpart NNN	VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations
Subpart OOO	Nonmetallic Mineral Processing Plants
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants
Subpart QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems
Subpart RRR	VOCs from Synthetic Organic Chemical Manufacturing Industry Reactor Processes
Subpart SSS	Magnetic Tape Coating Facilities
Subpart TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
Subpart UUU	Calciners and Dryers in Mineral Industries
Subpart VVV	Polymeric Coating of Supporting Substrates Facilities
Subpart WWW	Municipal Solid Waste Landfills
Subpart AAAA	Small Municipal Waste Combustion Units for which Construction is Commenced after August 30, 1999 or for which Modification or Reconstruction is Commenced after June 6, 2001

Subpart CCCC	Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced after November, 30, 1999 or for which Modification or Reconstruction is Commenced on or after June 1, 2001
Subpart EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
Subpart IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - Title V sources only.
Subpart JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines - Title V sources only.
Subpart KKKK	Standards of Performance for Stationary Combustion Turbines
Subpart LLLL	Standards of Performance for New Sewage Sludge Incineration Units
Subpart OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution
Subpart QQQQ	Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces - Title V sources only.
Subpart TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
40 CFR Part 60	Appendix A
40 CFR Part 60	Appendix B
40 CFR Part 60	Appendix C
40 CFR Part 60	Appendix D
40 CFR Part 60	Appendix F
40 CFR Part 60	Appendix I

40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants adopted by reference effective July 1, 2016.

Subpart A	General Provisions
Subpart C	Beryllium
Subpart D	Beryllium Rocket Motor Firing
Subpart E	Mercury
Subpart F	Vinyl Chloride
Subpart J	Equipment Leaks of Benzene

Subpart L	Benzene from Coke By-Product Recovery Plants
Subpart M	Asbestos
Subpart N	Inorganic Arsenic from Glass Manufacturing Plants
Subpart O	Inorganic Arsenic from Primary Copper Smelters
Subpart P	Inorganic Arsenic emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
Subpart V	Equipment Leaks (Fugitive Sources)
Subpart Y	Benzene from Benzene Storage Vessels
Subpart BB	Benzene from Benzene Transfer Operations
Subpart FF	Benzene Waste Operations
40 CFR Part 61	Appendix A
40 CFR Part 61	Appendix B
40 CFR Part 61	Appendix C
40 CFR Part 61	Appendix D
40 CFR Part 61	Appendix E

40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories adopted by reference effective July 1, 2016

Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)
Subpart C	List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List
Subpart D	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
Subpart F	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry
Subpart G	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater
Subpart H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

Subpart I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
Subpart J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
Subpart L	National Emission Standards for Coke Oven Batteries
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities - Title V sources only.
Subpart N	National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
Subpart R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
Subpart S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
Subpart T	National Emission Standards for Halogenated Solvent Cleaning
Subpart U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
Subpart W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
Subpart X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
Subpart Y	National Emission Standards for Marine Tank Vessel Loading Operations
Subpart AA	National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants
Subpart BB	National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants

Subpart CC	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries
Subpart DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations
Subpart EE	National Emission Standards for Magnetic Tape Manufacturing Operations
Subpart GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities
Subpart II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
Subpart JJ	National Emission Standards for Wood Furniture Manufacturing Operations
Subpart KK	National Emission Standard for the Printing and Publishing Industry
Subpart MM	National Emission Standard for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
Subpart OO	National Emission Standards for Tanks - Level 1
Subpart PP	National Emission Standards for Containers
Subpart QQ	National Emission Standards for Surface Impoundments
Subpart RR	National Emission Standards for Individual Drain Systems
Subpart SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
Subpart TT	National Emission Standards for Equipment Leaks - Control Level 1
Subpart UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
Subpart VV	National Emission Standards for Oil-Water Separators and Organic - Water Separators
Subpart WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2

Subpart XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
Subpart YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards
Subpart CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants
Subpart DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
Subpart EEE	National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors
Subpart GGG	National Emission Standards Pharmaceuticals Production
Subpart HHH	National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities
Subpart III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
Subpart JJJ	National Emission Standard for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
Subpart LLL	National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry
Subpart MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
Subpart NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
Subpart OOO	National Emission Standards for Hazardous Air Pollutants Emissions: Manufacture of Amino/Phenolic Resins
Subpart PPP	National Emission Standards for Hazardous Air Pollutants Emissions for Polyether Polyols Production
Subpart QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting

Subpart RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production - Title V sources only.
Subpart TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting
Subpart UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
Subpart VVV	National Emission Standard for Hazardous Air Pollutants: Publicly Owned Treatment Works
Subpart XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese
Subpart AAAA	National Emission Standard for Hazardous Air Pollutants: Municipal Solid Waste Landfills
Subpart CCCC	National Emission Standard for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
Subpart DDDD	National Emission Standard for Hazardous Air Pollutants: Plywood and Composite Wood Products
Subpart EEEE	National Emission Standard for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
Subpart FFFF	National Emission Standard for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
Subpart GGGG	National Emission Standard for Hazardous Air Pollutants: Solvent Extractions for Vegetable Oil Production
Subpart HHHH	National Emission Standard for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
Subpart IIII	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
Subpart JJJJ	National Emission Standard for Hazardous Air Pollutants: Paper and Other Web Coating
Subpart KKKK	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Cans

Subpart MMMM	National Emission Standard for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
Subpart NNNN	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Large Appliances
Subpart OOOO	National Emission Standard for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
Subpart PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
Subpart QQQQ	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Wood Building Products
Subpart RRRR	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Furniture
Subpart SSSS	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Coil
Subpart TTTT	National Emission Standard for Hazardous Air Pollutants for Leather Finishing Operations
Subpart UUUU	National Emission Standard for Hazardous Air Pollutants for Cellulose Products Manufacturing
Subpart VVVV	National Emission Standard for Hazardous Air Pollutants for Boat Manufacturing
Subpart WWWW	National Emission Standard for Hazardous Air Pollutants: Reinforced Plastic Composites Production
Subpart XXXX	National Emission Standard for Hazardous Air Pollutants: Rubber Tire Manufacturing
Subpart YYYY	National Emission Standard for Hazardous Air Pollutants for Stationary Combustion Turbines
Subpart ZZZZ	National Emission Standard for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines - Title V sources only.
Subpart AAAAA	National Emission Standard for Hazardous Air Pollutants for Lime Manufacturing Plants
Subpart BBBB	National Emission Standard for Hazardous Air Pollutants for Semiconductor Manufacturing

Subpart CCCCC	National Emission Standard for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks
Subpart DDDDD	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters
Subpart EEEEE	National Emission Standard for Hazardous Air Pollutants for Iron and Steel Foundries
Subpart FFFFF	National Emission Standard for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
Subpart GGGGG	National Emission Standard for Hazardous Air Pollutants: Site Remediation
Subpart HHHHH	National Emission Standard for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
Subpart IIIII	National Emission Standard for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants
Subpart JJJJJ	National Emission Standard for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
Subpart KKKKK	National Emission Standard for Hazardous Air Pollutants for Clay Ceramics Manufacturing
Subpart LLLLL	National Emission Standard for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
Subpart MMMMM	National Emission Standard for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
Subpart NNNNN	National Emission Standard for Hazardous Air Pollutants: Hydrochloric Acid Production
Subpart PTTTT	National Emission Standard for Hazardous Air Pollutants for Engine Test Cells/Stands
Subpart QQQQQ	National Emission Standard for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
Subpart RRRRR	National Emission Standard for Hazardous Air Pollutants: Taconite Iron Ore Processing

Subpart SSSSSS	National Emission Standard for Hazardous Air Pollutants for Refractory Products Manufacturing
Subpart TTTTTT	National Emission Standard for Hazardous Air Pollutants for Primary Magnesium Refining
Subpart UUUUUU	National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units
Subpart WWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
Subpart YYYYYY	National Emission Standard for Hazardous Air Pollutants for Area/Sources: Electric Arc Furnace Steelmaking Facilities
Subpart ZZZZZZ	National Emission Standard for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
Subpart BBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities - Title V sources only.
Subpart CCCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities - Title V sources only.
Subpart DDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
Subpart EEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
Subpart FFFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
Subpart GGGGGG	National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium
Subpart HHHHHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources - Title V sources only.
Subpart JJJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources

Subpart LLLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources
Subpart MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
Subpart NNNNNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
Subpart OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
Subpart PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
Subpart QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
Subpart RRRRRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
Subpart SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
Subpart TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
Subpart VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
Subpart WWWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
Subpart XXXXXX	National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories - Title V sources only.
Subpart YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
Subpart ZZZZZZ	National Emission Standards for Hazardous Air Pollutants Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries

Subpart AAAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing
Subpart BBBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
Subpart CCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
Subpart DDDDDDD	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing
Subpart EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
Subpart HHHHHHH	National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production
40 CFR Part 63	Appendix A
40 CFR Part 63	Appendix B
40 CFR Part 63	Appendix C
40 CFR Part 63	Appendix D
40 CFR Part 63	Appendix E
Section 2.18 of 40 CFR Part 65	Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry.

**WSR 16-20-020
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY**

[Filed September 26, 2016, 12:47 p.m., effective October 29, 2016]

Effective Date of Rule: October 29, 2016.

Purpose: This revision will better align our rule with rules of other state and local agencies. This will ease some of the frustration of companies that operate within differing jurisdictions.

Citation of Existing Rules Affected by this Order: Amending ORCAA Regulations Rule 6.3.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 16-15-066 on July 18, 2016.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 14, 2016.

Francea L. McNair
Executive Director

AMENDATORY SECTION

RULE 6.3 ASBESTOS

~~((The Board of Directors of the Olympic Region Clean Air Agency has found that the use, production, and emission of air contaminants into the atmosphere in the ORCAA region poses a threat to the public health, safety, and welfare of the citizens of the region and causes degradation of the environment. Therefore the Board, in order to control the emission of toxic air pollutants and to provide uniform enforcement of air pollution control in its jurisdiction and to carry out the mandates and purposes of the Washington Clean Air Act, the Federal Clean Air Act, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) (40 CFR Part 61), declares the necessity of the adoption of these rules pertaining to air contaminants.))~~

The Board of Directors of the Olympic Region Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect public health. In addition, the Board has adopted these regulations to coordinate with the EPA asbestos NESHAP, the OSHA asbestos regulation, the Washington Department of Labor and Industries asbestos regulations, the Washington Department of Ecology Dangerous Waste regulation, and the solid waste regulations of Clallam, Grays Harbor, Jefferson, Mason, Pacific and Thurston counties.

AMENDATORY SECTION

Rule 6.3.1 Definitions

When used in this Rule the following definitions shall apply:

~~("Adequately Wet" means sufficiently mixed, saturated, penetrated, or coated with a continuous fine mist of water or an aqueous solution to prevent visible emissions.~~

"AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accredita-

tion Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E.I.B.3) and whose certification is current.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite tremolite.

"Asbestos Containing Material (ACM)" means any material containing at least one percent (1%) asbestos as determined by polarized light microscopy using the Interim Method of the Determination of Asbestos in Bulk Samples contained in Appendix A of Subpart E in 40 CFR Part 763. Asbestos containing waste material includes asbestos containing material that has been disturbed or deteriorated in a way that is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos containing material collected for disposal, asbestos contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos containing waste material does not include samples of asbestos containing material taken for testing or enforcement purposes. This term does not include asbestos containing roofing material, regardless of asbestos content, when all of the following conditions are met:

(a) The asbestos containing roofing material is in good condition and is not peeling, cracking, or crumbling; and

(b) The binder is petroleum based, the asbestos fibers are suspended in that base, and the individual fibers are still encapsulated; and

(c) The binder still exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing it; and

(d) The building, vessel, or structure containing the asbestos containing roofing material will not be demolished by burning or mechanical renovation/demolition methods that may release asbestos fibers.

"Asbestos Encapsulation" means the application of an encapsulant to the asbestos materials to control the release of asbestos fibers into the air.

"Asbestos Project" means the disturbance, destruction, salvage, or disposal of any asbestos material. This term includes the removal and disposal of asbestos containing waste material from manufacturing operations that combine asbestos containing material with any other material(s) to produce a product and the removal and disposal of stored asbestos containing material or asbestos containing waste material. This term does not include the removal of less than 10 linear feet or 11 square feet of asbestos containing material. Nor does it include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other nonasbestos materials to seal or fill exposed areas where asbestos fibers may be released.

"Asbestos Survey" means an inspection using the procedures contained in 40 CFR 763.86 and 40 CFR 763.87, or an alternate method that has received prior written approval from the Control Officer, or designee, to determine whether materials or structures to be worked on, removed, disturbed, or demolished, contain asbestos. In residential dwellings, asbestos samples may be taken by the resident owner of the dwelling.

"Certified Asbestos Worker/Supervisor" means a person who is certified as required by the Washington State Department of Labor and Industries under WAC 296-65-010, WAC 296-65-012, and WAC 296-65-030 to undertake an asbestos project or, for federal employees working in a federal facility, trained in an equally effective program approved by the United States Environmental Protection Agency.

"Collected for Disposal" means asbestos containing material properly sealed in a leak tight, labeled container while adequately wet.

"Component" means any equipment, pipe, structural member, or other item covered, coated, or manufactured from asbestos containing material.

"Controlled Area" means an area to which only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act, have access. For residential dwellings, the controlled area is the interior of the dwelling, garage, or fenced area that is secured, and where warning signs are posted accordingly.

"Demolition" means the wrecking, dismantling, fire department training, or removal of any load supporting structural member that makes that portion of the structure unusable. Dismantling an owner occupied residential dwelling, or portion thereof, by hand does not constitute a demolition.

"Emergency" means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

"Facility" means any institutional, commercial, public, industrial, or residential structure, installation, building, (including any building containing condominiums or individual dwelling units operated as a residential cooperative) any vessel; ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling, is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use of function.

"Fugitive Source" means any sources of emissions not controlled by an air pollution control device.

"HEPA Filter" means a High Efficiency Particulate Air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.97% efficiency.

"Leak Tight Container" means a dust tight container, at least 6 mil thick, that encloses the asbestos containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and polyethylene plastic.

"Local Exhaust Ventilation and Collection System" means a system as described in Appendix J of EPA 560/565-024 (Guidance for Controlling Asbestos Containing Materials in Buildings).

"Owner or Operator" means any person who owns, leases, operates, controls, or is responsible for activities at an asbestos project site, or an asbestos project operation, or both.

"Owner-Occupied Residential Dwelling" means any single family housing unit which is permanently or seasonally occupied by the owner of the unit both prior to and after renovation or demolition. This term includes houses, mobile homes, trailers, houseboats, and houses with a 'mother-in-law apartment' or 'guest rooms.' This term does not include structures that are to be demolished or renovated as part of a commercial or public project. Nor does this term include any mixed-use building, structure, or installation that contains a residential unit, or any building that is leased, used as a rental, or for commercial purposes.

"Renovation" means the altering of a structure in a way that removes structural supports and/or other framing, but does not render the building uninhabitable.

"Visible Asbestos Emissions" means any asbestos containing materials that are visually detectable without the aid of instruments.

"Waste Generator" means any owner or operator of a source whose act or process produces asbestos containing waste material.

"Waste Shipment Record" means the shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos containing waste material.

"Work Day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday:))

Asbestos - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

Asbestos-containing Materials (ACM) - Any material containing more than one percent (1%) asbestos as determined using the method specified in EPA *Method for the Determination of Asbestos in Building Materials* EPA/600/R-93/116, July 1993, or more effective method as approved or required by EPA. This definition includes all loose vermiculite used as insulation.

Asbestos-containing Waste Material - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

Asbestos Hazard Emergency Response Act (AHERA) Building Inspector - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Appendix C to Subpart E.I.B.3) and whose certification is current.

Asbestos Hazard Emergency Response Act (AHERA) Project Designer - A person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763.90(g)) and whose certification is current.

Asbestos Project - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or

disposal of asbestos-containing materials, or any other action that disturbs or is likely to disturb any asbestos-containing materials. It includes the removal and disposal of stored asbestos-containing materials or asbestos-containing waste material. This term does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

Asbestos Survey - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86 and 40 CFR 763.87), or an alternate method that has received prior written approval from the Control Officer, or designee, to determine whether materials or structures to be worked on, removed, disturbed, or demolished, contain asbestos.

Component - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing materials.

Demolition - Wrecking, razing, dismantling, burning via fire protection agency training, or removal of any load supporting structural member of a structure, including any related handling operations, making all or part of the structure permanently uninhabitable or unusable.

Friable Asbestos-containing Materials - Asbestos-containing materials that when dry can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the materials in the course of demolition, renovation or disposal.

HEPA Filter - A High Efficiency Particulate Air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.97% efficiency.

Leak-Tight Container - A dust-tight and liquid-tight container that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

Liquid Wetting Agent - Water in which a surfactant (detergent) has been added.

Non-friable Asbestos-containing Materials - Asbestos-containing materials that when dry cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the materials in the course of demolition, renovation, or disposal.

Renovation - To make changes or repairs, other than demolition, to a structure.

Single-Family Residence - Any structure containing space for use such as living, sleeping, food preparation and eating. This term includes houses, mobile homes, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include multiple-family units (i.e. apartment, duplex, condominium, etc.), nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

Surfacing Material - Material that is sprayed or troweled on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

Suspect Material - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (except 3-tab composite roofing), fire barriers, gaskets, flooring material, and cement or concrete siding.

Thermal System Insulation - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

Visible Asbestos Emissions - Any asbestos containing materials that are visually detectable without the aid of instruments.

Waste Generator - Any owner or operator of a facility whose act or process produces asbestos-containing waste material.

Waste Shipment Record - The shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos-containing waste material.

AMENDATORY SECTION

(Rule 6.3.2 Notification Requirement)

(a) Application Requirements – Applicability. It shall be unlawful for any person to cause or allow work on an asbestos or demolition project unless the owner or operator has obtained written approval from the Control Officer, or designee, as follows:

(1) A written "Asbestos Permit" or a "Demolition Permit" shall be submitted on Agency provided forms by the owner or operator for approval by the Control Officer, or designee, before any work on an asbestos project or demolition begins. It shall be unlawful for any person to cause or allow any false or misrepresenting information on either form.

(2) The written permit for asbestos removal and/or demolition shall be accompanied by the appropriate fee, found in Rule 3.5.

(3) The written permit for a demolition shall also include a certification that there is no known asbestos containing material remaining in the area of the demolition.

(4) The duration of an asbestos project or demolition shall have a starting and completion date that is commensurate with the amount of work involved and shall not exceed one (1) year beyond the original submission date.

(5) A copy of the approved permit and asbestos survey and all subsequent amendments shall be available for inspection at the asbestos project or demolition site.

(6) Submission of an "Asbestos Permit" shall be prima facie evidence that the asbestos project involves asbestos containing material.

(7) Permits for multiple asbestos projects may be filed on one form, if the following criteria are met:

(i) The work will be performed continuously by the same contractor; and

(ii) The structures are in a contiguous group and the property owner has the same original post office box or mailing address; and

(iii) All asbestos, renovation or demolition projects are bid as a group under the same contract; and

(iv) The project specifications regarding location and dates are provided in detail in the form of a work plan. The work plan submitted must include:

(A) a map of the structures involved in the project;

(B) the site address for each structure;

(C) the amount and type of asbestos containing material in each structure (for structures with ACM);

(D) the schedule for performing asbestos project and demolition work;

(E) a copy of the asbestos survey for all structures that do not contain asbestos containing materials; and

(F) any other information requested.

(b) Permit Requirements – Advance Notification Period. Any permits required by Rule 6.3.2(a) shall be considered incomplete until all the information required by Rule 6.3.2(a) is received by the Control Officer, or designee, and accompanied by the appropriate, nonrefundable fee. The appropriate fee shall be determined by Rule 3.5:

(e) The notification for either an asbestos or demolition project shall be 10 working days, unless the project falls into a category below:

(1) The project is deemed an emergency.

(2) Prior Notification is required for removal and disposal of the following nonfriable asbestos containing materials: caulking, window glazing, or roofing (being removed by mechanical means). All other asbestos project and demolition requirements remain in effect.

(3) Prior Notification is required for asbestos removal or demolitions involving owner occupied, single family residences.

(d) Annual Permits. In addition to the permit requirement of Rule 6.3.2(a) and 6.3.2(b), the owner or operator of a facility may file for approval by the Control Officer, or designee, an annual written permit to conduct asbestos projects on one or more buildings, vessels, or structures at the facility during each calendar year for the purpose of scheduled maintenance or emergency repairs. The requirements of Rule 6.3.2(a)(1) through 6.3.2(a)(4), 6.3.2(a)(6), and 6.3.2(b) shall not apply to asbestos projects undertaken during the calendar year at the applicable facility if all of the following conditions are met:

(1) Annual Permit – Restrictions.

(i) The annual written permit shall be filed for approval by the Control Officer, or designee, before commencing work on any asbestos project to be specified in an annual permit.

(ii) The total amount of asbestos containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this rule shall be limited to less than 260 linear feet on pipe and 160 square feet on other components.

(iii) The permit requirements of Rules 6.3.2(a) and 6.3.2(b) shall apply to any asbestos project involving at least 260 linear feet on pipes or 160 square feet on other components for each building, vessel, or structure at the facility, including residential dwellings.

(iv) A copy of the written annual permit shall be available for inspection at the property owner or operator's office until the end of the calendar year.

~~(v)~~ Asbestos-containing waste material generated from asbestos projects filed under an annual permit may be stored for disposal at the facility if all of the following conditions are met:

~~(A)~~ All asbestos-containing waste material shall be treated in accordance with Rules 6.3.4 (a)(1), 6.3.4 (a)(2), and 6.3.4 (a)(3);

~~(B)~~ Accumulated asbestos-containing waste material collected during each calendar quarter shall be kept in a controlled storage area posted with one (1) or more asbestos warning signs and accessible only to authorized persons; and

~~(C)~~ All stored asbestos-containing waste material shall be deposited at a waste disposal site within ninety (90) calendar days after collection for disposal unless the asbestos-containing waste is handled as dangerous waste in accordance with chapter 173-303 WAC. The waste disposal site shall be operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the appropriate health department within the Agency's jurisdiction.

~~(2)~~ Annual Permit—Reporting Requirements and Fees. Annual written permit required by Rule 6.3.2(e) shall be submitted by the facility owner or operator on forms provided by the Agency and filed for approval by the Control Officer, or designee, accompanied by the annual fee stated in Rule 3.5.

~~(3)~~ Annual Permit—Quarterly Reporting Requirements. In addition to the written annual permit requirements of Rule 6.3.2(e), the facility owner or operator shall submit quarterly written reports to the Control Officer, or designee, within fifteen (15) days after the end of each calendar quarter.

~~(4)~~ Work Done Without Notification—Any work on an asbestos project, renovation, or demolition, for which notification is required, and is commenced or performed prior to obtaining approval from the Control Officer, or designee, constitutes a violation of this Rule.

~~(e)~~ Permit Requirements—Amendments. It shall be unlawful for any person to cause or allow any deviation from information contained in a written permit unless an amended permit has been received and approved by the Control Officer, or designee. Amended permits required by this rule shall be filed by the original applicant, received by the Control Officer, or designee, no later than the last filed completion date, and are limited to the following revisions:

~~(1)~~ A change in the job size category because of additional asbestos-containing material. In this case, the fee shall be increased accordingly and the fee shall be equal to, but not exceed, the fee amount provided for each size category specified in Rule 3.5;

~~(2)~~ The asbestos project, renovation, or demolition starting or completion date, provided that the total duration of the work does not exceed one (1) calendar year beyond the original submission date. If the appropriate waiting period has passed, further waiting is not required. If a waiting period is required, it shall be based on the original submission date.

~~(3)~~ Name, mailing address, and telephone number of the owner or operator of the asbestos project site or operation;

~~(4)~~ Waste disposal site, provided the revised waste disposal site is operated in accordance with the provisions of 40 CFR 61.154 or 40 CFR 61.155 and approved by the appropriate health department within the Agency's jurisdiction; and

~~(5)~~ Any other information requested by the Control Officer, or designee.

~~(f)~~ Opportunity for Amendment—In no case shall an amendment be accepted and approved by the Agency if it is filed after the last completion date on record. In the case of additional work to be performed after the last completion date on record, a new permit shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Rule 3.5

~~(g)~~ Advance Notification Period—Exemptions (Emergency). The Control Officer, or designee, may waive the required ten working day advance notification period in Rule 6.3.2 for an asbestos project or demolition if the facility owner demonstrates to the Control Officer, or designee, that there is an emergency as follows:

~~(1)~~ There was a sudden, unexpected event that resulted in a public health or safety hazard; or

~~(2)~~ The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; or

~~(3)~~ Asbestos-containing materials encountered that were not identified during the asbestos survey; or

~~(4)~~ The project must proceed to avoid imposing an unreasonable financial burden to the property owner.

The request for an Emergency Project must meet the requirements below:

~~(5)~~ Emergency Asbestos Project. The owner of a facility may submit a signed written request to waive the required ten (10) working day advance notification period for an asbestos project. The request shall be submitted for approval by the Control Officer, or designee, and be accompanied by the required permit and appropriate fee as required by Rules 3.5, 6.3.2(a), and 6.3.2(b). Any request for approval of an emergency asbestos project shall include, at a minimum:

~~(i)~~ The complete name, mailing address, and telephone number of the facility owner or operator, including city and zip code;

~~(ii)~~ The complete street address or location of the asbestos project site, including the city and zip code;

~~(iii)~~ A description of the sudden and unexpected event including the date the emergency occurred; and

~~(iv)~~ An explanation of how the sudden and unexpected event has caused an emergency condition.

~~(6)~~ Government Ordered Demolition. The owner of a facility may submit a signed written request to waive the required ten (10) working day advance notification period for a demolition if the request is accompanied by a copy of an order from a federal, state, or local government agency that requires demolition before the ten (10) working day advance notification period has elapsed. The request and copy of the order shall be submitted for approval by the Control Officer, or designee, and be accompanied by the required permits and appropriate fee as required by Rules 3.5, 6.3.2(a) and 6.3.2 (b). Any request for approval of an emergency demolition shall include, at a minimum:

~~(i)~~ The complete name, mailing address, and telephone number of the owner or operator of the facility and the asbestos/demolition project including the city and zip code;

~~(ii)~~ The complete street address or location of the demolition site, including the city and zip code;

- ~~(iii) The name, title, and authority of the government representative who has ordered the demolition;~~
- ~~(iv) The reason why the demolition was ordered; and~~
- ~~(v) The dates on which the order was received and the demolition was ordered to begin;))~~

Rule 6.3.2 Asbestos Survey Requirements

(a) Renovation. An asbestos survey is required for any renovation involving 48 square feet, or more, of suspect asbestos material. The property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials (ACM) in the work area and obtain an asbestos survey by an Asbestos Hazard Emergency Response Act (AHERA) building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of a single-family residence. In lieu of a survey, the owner of the residence may collect samples to have analyzed by a National Voluntary Laboratory Accreditation Program (NVLAP) certified lab per 40 CFR 763.87.

(1) A summary of the results of the asbestos survey shall be available at the work site and communicated to all persons who may come into contact with the material.

(2) If there are no suspect materials in the work area, this determination shall be available at the work site and communicated to all persons involved in the renovation.

(3) It is not required that an AHERA building inspector sample any material presumed to be ACM.

(b) Demolition. It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey, by an AHERA building inspector, of the structure.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be ACM.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall be available at the work site and communicated to all persons who may come into contact with the material.

AMENDATORY SECTION

(Rule 6.3.3 Procedures for Asbestos Emission Control

~~(a) Asbestos Project Requirements.~~ It shall be unlawful for any person to cause or allow work on an asbestos project unless the following procedures are employed:

~~(1) Any work on an asbestos project shall be performed by certified asbestos workers under the direct, onsite supervision of a certified asbestos supervisor. This certification requirement shall not apply to asbestos projects conducted in an owner-occupied, single family residence performed by the resident owner of the dwelling in accordance with Rule 6.3.3 (b).~~

~~(2) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or temporarily off-site).~~

~~(3) All asbestos containing material shall be kept adequately wet while being removed from any structure, building, vessel, or component.~~

~~(4) All asbestos containing material that has been removed or may have fallen off components during the course of an asbestos project shall be:~~

~~(i) Kept adequately wet until collected for disposal; and~~
~~(ii) Collected for disposal at the end of each working day; and~~

~~(iii) Contained in a controlled area at all times until transported to a waste disposal site; and~~

~~(iv) Carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise handled in such a manner that may risk further damage to them; or~~

~~(v) Transported to the to the ground via dust tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as a unit or in sections.~~

~~(5) The exterior of each leak tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.~~

~~(6) No visible emissions shall result from an asbestos project.~~

~~(7) Mechanical assemblies or components covered, coated, or manufactured from asbestos containing material, removed as a unit or in sections, shall be contained in a leak tight wrapping after wetting and labeled in accordance with Rule 6.3.4 (a)(1)(iii).~~

~~(i) For large components such as boilers, steam generators, and large tanks, the asbestos containing material is not required to be removed or stripped if the components can be removed, stored, transported, and deposited at a waste disposal site or reused without disturbing or damaging the asbestos.~~

~~(ii) Metal components such as valves, fire doors, and reactor vessels that have internal asbestos containing material may avoid wetting and leak tight wrapping if:~~

~~(A) All access to the asbestos containing material is welded shut; or~~

~~(B) The component has mechanical seals in place that separate the asbestos containing material from the environment and these seals cannot be removed by hand; and~~

~~(C) The components are labeled in accordance with Rule 6.3.4 (a)(1)(iii).~~

~~(8) Local exhaust ventilation and collection systems used on an asbestos project shall:~~

~~(i) Be maintained to ensure the integrity of the system; and~~

~~(ii) When feasible, have one or more transparent plastic or glass viewing ports installed on the walls of the enclosure in such a manner that will allow for viewing of all components inside the enclosure. When available, existing windows may be utilized for viewing ports.~~

~~(9) Local exhaust ventilation and collection systems, control devices, and vacuum systems, used on an asbestos project shall be equipped with a HEPA exhaust filter, maintained in good working order, and exhibit no visible emissions.~~

~~(10) It shall be unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of asbestos containing material (e.g., not removing all asbestos containing material in a structure scheduled for demolition or partially removing asbestos containing material and leaving remaining asbestos containing material in a state that makes it more susceptible to being disturbed, or leaving it on the ground, outside and open to the environment.~~

~~(b) Asbestos Project – Exemptions for Residential Dwellings. The requirements of 6.3.3 (a)(1) shall not apply to the removal of asbestos on furnace interiors and direct applied mudded asbestos insulation on hot water heating systems. This work must be done by asbestos certified individuals in accordance with Washington State Labor and Industries or Occupational Safety Health Administration standards.~~

~~(c) Renovation – Requirements. It shall be unlawful for any person to cause or allow any renovation unless prior to renovation, the property owner or the owner's agent obtains an asbestos survey, or can otherwise competently declare the material being removed as not containing asbestos and file appropriate permits.~~

~~(d) Demolition – Requirements. It shall be unlawful for any person to cause or allow the demolition of any building, vessel, structure, or portion thereof, unless all asbestos containing materials have been removed from the area to be demolished. It shall be unlawful for any person to cause or allow any demolition that would disturb asbestos containing material or prevent access to the asbestos containing material for removal and disposal.~~

~~(e) Demolition – Asbestos Removal Exemptions. Asbestos containing material need not be removed before the demolition of any building, vessel, structure, or portion thereof if:~~

~~(1) The asbestos containing material is on a component that is encased in concrete or other material determined by the Control Officer, or designee, to be equally effective in controlling asbestos emissions. In this case, the permit requirements of Rule 6.3.2 shall apply and these materials shall be kept adequately wet whenever exposed during demolition until disposed of in accordance with Rule 6.3.4 (a)(2); or~~

~~(2) The asbestos containing material could not be removed prior to demolition because it is not accessible until after demolition begins. In this case, the permit requirements of Rule 6.3.2 shall apply and the exposed asbestos containing material and asbestos contaminated debris shall be kept adequately wet at all times until disposed of in accordance with Rule 6.3.4 (a)(2); or~~

~~(3) The material was not accessible for removal because of hazardous conditions. Such conditions may include environments that are contaminated by toxic substances, structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. Under such conditions, the facility owner or operator may submit a signed written request for conditional approval by the Control Officer, or designee, to waive the requirements of Rule 6.3.3(c). In this case, the permit requirements of Rule 6.3.2 shall apply and the exposed asbestos containing material and asbestos con-~~

~~taminated debris shall be kept adequately wet at all times until disposed of in accordance with Rule 6.3.4 (a)(2). Evidence of the hazardous condition, as documented by a state or local government agency, or other competent person, shall accompany the written request in addition to the permit and appropriate fee as required by Rule 6.3.2. The request for exemption from Rule 6.3.3(e) shall include, at the minimum:~~

~~(i) The complete name, mailing address, and telephone number of the owner or operator of the facility, including the city and zip code;~~

~~(ii) The complete street address or location of the demolition site, including the city and zip code;~~

~~(iii) The name, title, and authority of the person who has determined the hazardous condition;~~

~~(iv) A description of the hazardous condition that prevents the removal of asbestos containing material prior to demolition, including the amount, type, and specific location(s) within the structure of such materials; and~~

~~(v) The procedures that will be used to prevent the release of asbestos fibers into the ambient air.~~

~~(f) Alternative Control Measures. The owner or operator of an asbestos project may submit a signed written request to use an alternative control measure that is equally effective in controlling asbestos emissions, for approval by the Control Officer, or designee. The written request shall include, at a minimum:~~

~~(1) The complete name, mailing address, and telephone number of the owner or operator of the asbestos project, including the city and zip code;~~

~~(2) The complete street address or location of the site, including the city and zip code;~~

~~(3) A description of the material, including the type and percentage of asbestos in the material, total amount of material involved, and the specific location(s) of the material on the site; and~~

~~(4) The reason why an alternative control measure is required and a description of the proposed alternative control measure to be employed, including the procedures that will be used to prevent the release of asbestos fibers into the ambient air.)~~

Rule 6.3.3 Controlled and Regulated Substances

~~(a) No person shall cause or allow visible asbestos emissions, including emissions from asbestos waste materials:~~

~~(1) On public or private lands, on developed or undeveloped properties and on any open uncontrolled and non-designated disposal sites;~~

~~(2) During the collection, processing, handling, packaging, transporting, storage and disposal of any asbestos-containing waste material; or~~

~~(3) From any fugitive source.~~

AMENDATORY SECTION

~~((Rule 6.3.4 Disposal of Asbestos Containing Waste Material~~

~~(a) Disposal Requirements. It shall be unlawful for any person to cause or allow work on an asbestos project unless the following procedures are employed during the collection;~~

processing, packaging, transporting, or deposition of any asbestos-containing material:

~~(1) Treat all asbestos-containing waste material as follows:~~

~~(i) Adequately wet all asbestos-containing waste material and mix asbestos waste from control devices, vacuum systems, or local ventilation and collection systems with water to form a slurry;~~

~~(ii) After wetting, seal all asbestos-containing waste material in leak-tight containers or wrapping to ensure that they remain adequately wet when deposited at a waste-disposal site;~~

~~(iii) Permanently label wrapped materials and each container with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the Occupational Safety and Health Administration. Permanently mark the label with the date the material was collected for disposal, the name of the waste generator, the name and affiliation of the certified asbestos supervisor, and the location at which the waste was generated;~~

~~(iv) Ensure that the exterior of each container is free of all asbestos residue; and~~

~~(v) Exhibit no visible emissions during any of the operations required by this rule.~~

~~(2) All asbestos-containing waste material shall be deposited within ten (10) calendar days after collection for disposal at a waste-disposal site operated in accordance with the provisions of 40 CFR 61.154 or 40 CFR 61.155 and approved by the appropriate city or county department. The requirement is modified by Rule 6.3.2(e) for asbestos-containing waste material from asbestos projects conducted under annual permit.~~

~~(3) All asbestos-containing waste materials, handled as dangerous waste in accordance with chapter 173-303 WAC, shall be excluded from the requirements of Rule 6.3.4 (a)(1) and 6.3.4 (a)(2).~~

~~(b) Alternative Storage Method—Asbestos Storage Facility. The owner or operator of a licensed asbestos abatement company or disposal facility may apply to the Control Officer, or designee, to establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material.~~

~~(1) It is unlawful to cause or allow the operation of a temporary asbestos storage facility without the prior written approval of the Control Officer, or designee.~~

~~(2) The owner or operator must request authorization for an asbestos storage facility. When approved, the Authorization will be returned and be available at the facility.~~

~~(3) An asbestos storage facility shall meet the following general conditions:~~

~~(i) Asbestos-containing waste material must be stored in a container with a single-piece liner at least 6 mil in thickness; and~~

~~(ii) Said container must be in a secured building or in a secured exterior enclosure; and~~

~~(iii) The container and enclosure must be locked except during transfer of asbestos-containing waste material and have asbestos warning signs posted on the container;~~

~~(iv) Storage, transportation, disposal, and return of the waste shipment record to the waste generator will not exceed the 45-day requirement of 40 CFR Part 61.150; and~~

~~(v) A copy of all waste shipment records shall be retained for at least 2 years, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of the waste shipment records shall be provided to the Agency upon request.~~

~~(e) Alternative Disposal Method—Asbestos Cement Water Pipe. Asbestos cement water pipe used on public right of ways or public easements shall be excluded from the disposal requirements of Rule 6.3.4 (a)(2) if the following conditions are met:~~

~~(1) Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least three (3) feet or more of non-asbestos fill material and the state, county or city authorities are notified in writing of buried asbestos cement pipe; and~~

~~(2) All asbestos-containing waste material, including asbestos cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos-contaminated material, debris, or containers, shall be subject to the requirements of Rule 6.3.))~~

Rule 6.3.4 Notification Requirements

(a) It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, or designee, has been submitted to the ORCAA on approved forms, in accordance with the notification period requirements contained in 6.3.4(c) Notification Period;

(1) Notification is required for all demolitions of structures with a footprint greater than 120 square feet, even if no ACM is present. All other demolition requirements remain in effect.

(2) The notification shall be accompanied by the appropriate nonrefundable fee as set forth in Rule 3.5.

(3) A copy of the notification, all amendments to the notification, the asbestos survey, and a work plan for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

(4) Notification for multiple asbestos projects or demolitions may be filed by a property owner or agent on one form if all the following criteria are met:

(i) The work will be performed continuously by the same contractor; and,

(ii) A work plan is submitted that includes: a map clearly identifying the structures involved in the project; the amount and type of ACM in each structure; and the schedule for performing asbestos project and demolition work; and,

(iii) The project must be bid as a group under the same contract; and

(iv) The structures must be on contiguous property.

(b) Exemptions from Notification

(1) Notification is not required for asbestos projects containing less than 10 linear feet on pipe or 48 square feet (per structure, per calendar year) of any ACM.

(2) Notification is not required for removal and disposal of non-friable caulking, window glazing and roofing.

(c) Notification Period

<u>Project</u>	<u>Notification Period</u>
<u>Asbestos</u>	<u>10 days prior to commencement of work on project</u>
<u>Asbestos-NESHAP¹</u>	<u>14 days prior to commencement of work on project</u>
<u>Asbestos Project Amendments</u>	<u>Prior Notice</u>
<u>Demolition</u>	<u>14 days prior to commencement of work on project</u>
<u>Emergency</u>	<u>Prior Notice</u>

(1) The duration of an asbestos project shall not exceed one year from date of submission of the original notification.

(2) The Control Officer, or designee, may waive the notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) ACM. All other asbestos project and demolition requirements remain in effect.

¹Projects subject to 40 CFR Part 61 Subpart M must comply with the 14-day notification period.

AMENDATORY SECTION

((Rule 6.3.5 Controlled and Regulated Substances

(a) No person shall cause or allow visual asbestos emissions, including emissions from asbestos waste materials

(1) On public or private lands, on developed or undeveloped properties and on any open uncontrolled and non-designated disposal sites;

(2) During the collection, processing, handling, packaging, transporting, storage and disposal of any asbestos containing waste material; or

(3) From any fugitive source.))

Rule 6.3.5 Annual Notification

(a) A property owner or agent may file one annual notification for asbestos projects on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(1) The annual notification shall be filed with ORCAA before beginning work on any asbestos project included in the annual notification;

(2) The annual notification covers only those structures, vessels, or buildings from the same industrial grouping located on contiguous or adjacent properties and are under common ownership and control.

(3) The total amount of ACM removed must be less than 260 linear feet on pipes or less than 160 square feet of any ACM; and

(4) The property owner or agent submits quarterly written reports to the Control Officer, or designee, on ORCAA-approved forms within 15 days after the end of each calendar quarter.

NEW SECTION

Rule 6.3.6 Asbestos Project Amendments

(a) An amendment shall be submitted by the original applicant, to the Control Officer, or a designee, for the following changes in a project:

- (1) Change in the quantity of asbestos to be removed; or
- (2) Changes in the ACM that will be removed; or
- (3) Change of contractor; or
- (4) Changes in the start date, completion date, or work schedule, including hours of work.

NEW SECTION

Rule 6.3.7 Emergencies—Exceptions to Advance Notification Period

(a) The Control Officer, or designee, may waive the advance notification period, if the property owner or agent submits a written request that demonstrates to the Control Officer, or designee, that an asbestos project or demolition must be conducted immediately because of any of the following:

- (1) There was an event that resulted in a public health or safety hazard;
- (2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;
- (3) ACM were encountered that were not identified during the asbestos survey; or,
- (4) The project must proceed to avoid imposing an unreasonable burden.

NEW SECTION

Rule 6.3.8 Asbestos Removal Requirements Prior to Renovation or Demolition

(a) Except as provided in Rule 6.3.8(b), it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb ACM or damage a structure so as to preclude access to ACM for future removal, without first removing all ACM in accordance with the requirements of this regulation. ACM need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(b) Inaccessible Asbestos Removal Requirements. ACM may be removed during demolition, if the property owner demonstrates to the Control Officer, or designee, through a work plan, that the ACM is not accessible such as:

- (1) Structures or buildings that are structurally unsound and in danger of imminent collapse;
- (2) Conditions that are immediately dangerous to life and health;
- (3) Unable to access all asbestos material prior to demolition.
- (4) The owner must submit:
 - (i) written determination of the hazard by an authorized government official or a licensed structural engineer; and,
 - (ii) a work plan outlining the procedures that will be followed to control asbestos emissions during the demolition or

renovation and disposal of the asbestos-containing waste material.

NEW SECTION

Rule 6.3.9 Procedures for Asbestos Projects

(a) **Training Requirements.** It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety and Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certificate is current. This certification requirement does not apply to individuals who work on asbestos projects on their own single-family residence(s).

(b) **Asbestos Work Practices.** Except as provided in Rule 6.3.4 (b)(2) of this Rule, it shall be unlawful for any person to cause or allow the removal of ACM unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order. Emissions from the negative air exhaust shall be controlled by a HEPA filter.

(3) **Absorbent ACM,** such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated absorbent ACM exposed during removal shall be immediately saturated with a liquid wetting agent. All absorbent asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(4) **Nonabsorbent ACM,** such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent ACM exposed during removal shall be immediately coated with a liquid wetting agent. All nonabsorbent asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

(5) **Metal components** (such as valves and fire doors) that have internal ACM are exempt from the requirements of 6.3.4 if all access to the ACM is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the ACM from the environment.

(6) **ACM that are being removed,** have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged, unless enclosed inside a negative pressure enclosure.

(7) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was

generated. This marking must be readable without opening the container.

(8) No visible asbestos emission shall result from an asbestos project. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(9) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(10) It shall be unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of ACM (e.g., not removing all ACM in a structure scheduled for demolition or partially removing ACM and leaving remaining ACM in a state that makes it more susceptible to being disturbed, or leaving it on the ground, outside and open to the environment).

NEW SECTION

Rule 6.3.10 Disposal of Asbestos-Containing Waste Material

(a) Except as provided in 6.3.10(c) of this Regulation, ACM must be transferred offsite within 10 days of removal. The ACM may be transferred to an approved temporary storage site or to a waste disposal site operated in accordance with 40 CFR 61.154 or 40 CFR 61.155.

(b) **Temporary Storage Site.** A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer, or designee, and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(c) **Disposal of Asbestos Cement Pipe.** Asbestos cement water pipe used on public right-of-ways or public easements shall be excluded from the disposal requirements of Rule 6.3.10 if the following conditions are met:

(1) Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least three (3) feet or more of non-asbestos fill material and the state, county or city authorities are notified in writing of buried asbestos cement pipe; and

(2) All asbestos-containing waste material, including asbestos cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos contaminated material, debris, or containers, shall be subject to the requirements of Rule 6.3.

NEW SECTION**Rule 6.3.11 Compliance with other Rules**

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the United States Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

WSR 16-20-095
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed October 4, 2016, 3:02 p.m., effective November 4, 2016]

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

Purpose: SB 5600 from the 2015 legislative session requires that certain definitions concerning vulnerable adults must be amended, including the definitions of abuse and sexual abuse. The department is amending sections of chapter 388-76 WAC to assure compliance with this requirement. Since the implementation of Executive Order 10-06 in 2010 suspending noncritical rule development and adoption, the department has communicated clarifying information and changes to stakeholders through Dear Provider Letters whenever the change or changes did not meet the moratorium criteria for rule change. However, with the recent revision of the criteria for rule change, the department is incorporating the aforementioned information into rule.

Other sections of the rule are either being amended to clarify the rule or revise the language in the rule to better align with the intent of statute. Additionally, revisions to this rule associated with the physical environment of the adult family home are being made for the health and safety of the residents residing in the home, such as ensuring adequate grab bars when showering or toileting, and stable barriers around fireplaces or woodstoves to prevent incidental contact. Lastly, the department is repealing sections in this rule to condense the emergency evacuation sections in chapter 388-76 WAC.

Reasons supporting proposal: This amendment will ensure the department is in compliance with the newly passed law, and that rules are clear so that the rights and safety of residents are protected.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10820 and 388-76-10880; and amending WAC 388-76-10000, 388-76-10145, 388-76-10463, 388-76-10535, 388-76-10540, 388-76-10650, 388-76-10655, 388-76-10715, 388-76-10730, 388-76-10825, 388-76-10845, 388-76-10865, and 388-76-10895.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Adopted under notice filed as WSR 16-14-037 on June 28, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-76-10000 Definitions.

- Updated RCW reference contained in definition of "financial exploitation."

WAC 388-76-10535 Resident rights—Notice of change to services.

- Added "scope of care" to subsection (1).
- Added clarifying language to subsection (1)(b).
- Changed "or" to "and" in subsection (1)(d).

WAC 388-76-10650 Medical devices.

- Added clarifying language.

WAC 388-76-10655 Physical restraints.

- Clarified language in WAC 388-76-10655(2) regarding less restrictive alternatives to physical or mechanical restraints.

WAC 388-76-10730 Grab bars and hand rails.

- Changed October 1, 2016, date to November 1, 2016.
- The phrase, "if needed by any resident" was added back into this section.
- Added language that homes licensed before November 1, 2016, should also have grab bars and hand rails securely installed.

WAC 388-76-10825 Space heaters and stoves.

- Added clarifying language.

WAC 388-76-10845 Emergency drinking water supply.

- Clarified the requirement of emergency drinking water for the adult family home's resident capacity.

WAC 388-76-10865 Evacuation from adult family home.

- Date in WAC 388-76-10865(3) changed to November 1, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 14, Repealed 2.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 14, Repealed 2.

Date Adopted: September 28, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10000 Definitions. "Abandonment"

means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment ~~((on))~~ of a vulnerable adult~~((s))~~.

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

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

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

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

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

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

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

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

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"**Adult family home**" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"**Affiliated with an applicant**" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"**Applicant**" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"**Capacity**" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"**Caregiver**" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"**Chemical restraint**" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

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

"**Dementia**" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"**Department case manager**" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"**Developmental disability**" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or

services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020((6))(7).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another indi-

vidual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. **"Mechanical restraint"** does not include the use of devices, materials, or equipment that are:

- (a) Medically authorized, as required; and
- (b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

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

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means ~~((a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms))~~ application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force on a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

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

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection.

tion for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

- (1) Another employee or volunteer from the same business or organization; or
- (2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager ~~((has))~~:

- (1) Meets all ~~((of the))~~ minimum qualifications for providers, entity representatives, or resident managers listed in WAC 388-76-10130; and

- (2) Has a current valid ~~((first aid and))~~ cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10463 Medication—Psychopharmacologic. For residents who are given psychopharmacologic medications, the adult family home must ensure:

- (1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms; ~~((and))~~
- (2) The drug is prescribed by a physician or health care professional with prescriptive authority; ~~((and))~~
- (3) The resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed; ~~((and))~~
- (4) Changes in medication only occur when the prescriber decides it is medically necessary; and
- (5) The resident ~~((has given informed consent for its use))~~ or resident representative is aware the resident is taking the psychopharmacologic medication and its purpose.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident in advance of changes to services, items, activities, scope of care, or home rules as follows:

- (a) In writing; ~~((and~~
- (b) ~~In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.~~
- (2) ~~The home must:~~
- (a) ~~Provide at least fourteen days advanced notice when there has been a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items or activities.~~
- (b) ~~Give residents a thirty day notice prior to)~~ (b) At least fourteen days before the effective date of a change due to a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items, or activities;

(c) At least thirty days before the effective date of ((the)) a change ((if the home)) that decreases the scope of care, services, or activities due to circumstances beyond the home's control; and

~~((e) Give residents a)~~ (d) At least ninety ((day notice prior to)) days before the effective date ((of the decrease if)) the home voluntarily decreases the scope of care, services, or activities the home provides, ((or)) if the change ((results)) will result in the discharge of at least one resident.

- ~~((3))~~ (2) The home is not required to ((give notice: (a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and

~~(b) If the resident is provided different or additional services, items or activities from the home which do not result in an additional cost to the resident))~~ notify the resident if the home provides him or her different or additional services, items, or activities that do not result in an additional cost to the resident.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits. (1) The adult family home must complete the department's disclosure of charges form~~((s as provided by the department))~~ and provide a copy ~~((of it))~~ to each resident ~~((who is))~~ admitted to the home.

(2) If the adult family home ~~((chooses to provide its own disclosure of fees and charges to residents in addition to the form required by the department, the home:~~

(a) Must give full disclosure in writing;

(b) In a language the resident understands;

~~((e) Prior to the receipt of any funds))~~ requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands prior to its receipt of any funds.

(3) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, ~~((or is))~~ transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that ~~((will be refunded))~~ the home will refund to the resident if the resident leaves the home.

(4) The home must ensure that the ~~((receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home))~~ resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.

(5) If the home does not provide ~~((these))~~ the disclosures in subsection 3 to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

(6) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges ~~((already))~~ paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home ~~((in spite))~~ regardless of any minimum stay policy or discharge notice requirements; ~~((except that))~~

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges~~((s))~~, unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) ~~((May))~~ Must not require the resident to obtain a refund from a placement agency or person.

(7) The adult family home ~~((may))~~ must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(8) ~~((AH))~~ The adult family home~~((s covered under this section are required to refund any and all refunds due the))~~ must provide the resident with any and all refunds due to him or her within thirty days from the resident's date of discharge from the home.

(9) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(10) ~~((H))~~ The home ~~((requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are))~~ must ensure that any resident admission agreement is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10650 Medical devices. ~~((Before the adult family home uses medical devices for any resident, the home must:~~

(1) Review the resident assessment to determine the resident's need for and use of a medical device;

(2) Ensure the resident negotiated care plan includes the resident use of a medical device or devices; and

(3) Provide the resident and family with enough information about the significance and level of the safety risk of use of the device to enable them to make an informed decision about whether or not to use the device) (1) The adult family home must not use a medical device with a known safety risk as a restraint or for staff convenience.

(2) Before a medical device with a known safety risk is used by a resident, the home must:

(a) Ensure an assessment has been completed that identifies the resident's need and ability to safely use the medical device;

(b) Provide the resident and his or her family or legal representative with information about the device's benefits and safety risks to enable them to make an informed decision about whether to use the device;

(c) Ensure the resident's negotiated care plan includes how the resident will use the medical device; and

(d) Ensure the medical device is properly installed.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10655 Physical and mechanical restraints. The adult family home must ensure:

(1) Each resident's right to be free from physical and mechanical restraints used for discipline or convenience;

(2) Prior to the use of ~~((a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and~~

~~(3) That))~~ physical or mechanical restraints, less restrictive alternatives have been tried and documented in the resident's negotiated care plan;

(3) The physical or mechanical restraints ((used)) have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) ~~((That))~~ If physical or mechanical restraints are used to treat a resident's medical symptoms ~~((that))~~, the restraints are applied and immediately supervised on-site by a:

- (a) Licensed registered nurse;
- (b) Licensed practical nurse; or
- (c) Licensed physician~~((and))~~.

~~((d))~~ (5) For the purposes of this ~~((subsection, immediate supervised))~~ section, "immediately supervised" means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; and

(3) One door leading to the outside ~~((must be))~~ is designated as the primary egress and ~~((effective))~~ homes licensed after January 1, 2016 ~~((must))~~ have a lever door handle and hardware that allows residents to exit ~~((even))~~ when the door is locked ~~((and also allows))~~ and reentry ~~((into the home))~~ without a key, tool, or special knowledge or effort by residents.

(4) Other external exit doors not designated as the primary egress, must open without any special skills or knowledge and they ~~((must))~~ remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident.

(5) All internal and external doors ~~((must))~~ comply with local jurisdictional requirements as well as the building code requirements ~~((as contained))~~ in chapter 51-51 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10730 Grab bars and hand rails. (1) ~~((The adult family home must install grab bars or hand rails to meet the needs of each resident.~~

~~(2) At a minimum, grab bars must be installed and securely fastened in:~~

~~(a) Bathing))~~ Homes licensed before November 1, 2016 must have at a minimum securely installed:

(a) Grab bars in bathing facilities such as tubs and showers; ((and))

(b) Grab bars next to toilets, if needed by any resident ~~((~~

~~(3) If needed by any resident, hand rails must be installed and conveniently located on:~~

~~(a) A step or steps; and~~

~~(b) Ramps);~~

~~(c) Handrails on a step or steps if needed by any resident; and~~

~~(d) Handrails on ramps if needed by any resident.~~

(2) Homes licensed and bathroom additions that occur after November 1, 2016 must install grab bars securely fastened in accordance with WAC 51-51-0325 at the following locations:

(a) Bathing facilities such as tubs and showers; and

(b) Each side of any toilet used by residents.

(3) Homes licensed after November 1, 2016 must install handrails on each side of the following:

(a) Step or steps; and

(b) Ramps used by residents.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10825 Space heaters, fireplaces, and stoves. ~~((The adult family home must ensure:~~

~~(1) The following space heaters are not used in a home except during a power outage and the portable heater is only safe source of heat:~~

~~(a) Oil;~~

~~(b) Gas;~~

~~(c) Kerosene; and~~

~~(d) Electric.~~

~~(2) Stoves and heaters do not block residents, staff or household members from escaping))~~ (1) The adult family home must not use oil, gas, kerosene, or electric space heaters that do not have an underwriters laboratories (UL) rating.

(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.

(3) The adult family home must ensure that fireplaces and stoves have a stable barrier that prevents accidental resident contact. The adult family home is not required to have a barrier if the fireplace and stove surfaces are not hot to the touch when in use.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

(1) Will last for a minimum of seventy-two hours for ~~((each resident and each))~~ the home's licensed capacity, every household member, and caregiving staff;

(2) Is at least three gallons for ~~((each resident and each))~~ the home's licensed capacity, every household member, and caregiving staff;

(3) Is stored in well-sealed food grade or glass containers;

(4) Is chlorinated or commercially-bottled;

(5) Is replaced every six months, unless ~~((the commercial water bottle is labeled for a longer expiration date))~~ it is sealed and commercially-bottled; and

(6) Is stored in a cool, dry location away from direct sunlight.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10865 ((Emergency)) Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all ~~((people living in the home:~~

~~(1) From the home to a safe location outside the home; and~~

~~(2) In five minutes or less)) residents from the home to a safe location outside the home in five minutes or less.~~

(2) The home must ensure that residents who require assistance are able to evacuate the home as follows:

(a) Through the primary egress door;

(b) Via a path from the resident's bedroom that does not go through other bedrooms; and

(c) Without the resident having to use any of the following:

(i) Stairs;

(ii) Elevators;

(iii) Chairlift; or

(iv) Platform lift.

(3) Ramps for residents to enter, exit, or evacuate on homes licensed after November 1, 2016 must comply with WAC 51-51-0325.

(4) Homes that serve residents who are not able to hear the fire alarm warning must install visual fire alarms.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. The adult family home must ensure:

(1) Emergency evacuation drills occur during random staffing shifts at least every two months; and

(2) All residents take part in together and at the same time at least one emergency evacuation drill each calendar year ~~((involving))~~ that includes full evacuation from the home to a safe location.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms.

WAC 388-76-10880 Emergency evacuation adult family home bedrooms.

WSR 16-21-003

PERMANENT RULES

DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

[Filed October 6, 2016, 12:35 p.m., effective January 1, 2017]

Effective Date of Rule: January 1, 2017.

Purpose: The rules will guide the state historic preservation officer and director of the department of archaeology and historic preservation (DAHP) in administering the Washington state main street program (WSMSP). WSMSP was created by the legislature pursuant to chapter 43.360 RCW to assist local jurisdictions implementing economic and physical revitalization through the activities of designated and qualified 501 (c)(3) or (c)(6) organizations. The WSMSP coordinator together with the managers of over thirty designated main street programs in Washington have consulted with the director of DAHP on the need to place into rules the policies, eligibility criteria, plus roles and responsibilities of the state and local partners in order to sustain a strong and vital program.

Statutory Authority for Adoption: RCW 27.34.220, 27.53.140, 43.21C.120.

Adopted under notice filed as WSR 16-14-113 on July 6, 2016.

Changes Other than Editing from Proposed to Adopted Version: "State" was added to WAC 25-50-050 (3)(a).

"Washington main street community" and "eligible organization" are now used consistently throughout the rules.

The phrase "will no longer receive" was changed to "may receive reduced" in WAC 25-50-060 to be consistent with RCW 43.360.030(1).

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

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

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

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

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

Date Adopted: October 6, 2016.

Allyson Brooks
Director

ADOPTED RULES

Chapter 25-50 WAC

Washington State Main Street Program

NEW SECTION

WAC 25-50-010 Purpose. The purpose of this chapter is to establish criteria for application and designation of

Washington main street communities under chapter 43.360 RCW.

NEW SECTION

WAC 25-50-020 Definitions. (1) "Department" means the department of archaeology and historic preservation.

(2) "Director" means the director of the department.

(3) "Washington state main street program" or "WSMSP" means the program established by the department pursuant to chapter 43.360 RCW.

(4) "Washington main street community" means a local community designated by the department pursuant to chapter 43.360 RCW.

(5) "Eligible organization" means a nonprofit organization under internal revenue code sections 501 (c)(3) or (c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area.

NEW SECTION

WAC 25-50-030 Application requirements and form.

(1) To apply for designation as a Washington main street community through WSMSP, an eligible organization must complete an application form and submit it to the WSMSP.

(2) Each application shall be submitted in a form approved by the state historic preservation officer, by October 31 of the year submitted.

(3) An application form may be obtained from the Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343 or online at the Washington main street program website at <http://www.dahp.wa.gov/programs/mainstreet-program>.

NEW SECTION

WAC 25-50-040 Main street program—Eligibility criteria. Each application for designation as a Washington main street community shall include information demonstrating that the applicant meets the following criteria:

(1) Has obtained and will maintain status as an independent, recognized 501 (c)(3) or (c)(6) nonprofit organization with the sole mission of revitalizing a historic downtown commercial district.

(2) Has developed and will maintain a comprehensive downtown revitalization strategy based on the National Main Street Center's Main Street Approach® structure. This shall include implementing a balance of activities in the areas of organization, promotion, design, and economic vitality. This shall also include having an appropriate vision statement, mission statement, goals, objectives, activities, budget and a comprehensive annual work plan adopted by the organization.

(3) Based on population of the local jurisdiction, maintain a minimum level of staffing to achieve the eligible organization's mission, goals and annual work plan. The jurisdiction's population shall be determined by the most recent census from the United States Census Bureau in one of the three following categories:

(a) Jurisdiction population of 0-2500: part-time, volunteer executive director.

(b) Jurisdiction population of 2501-5000: half-time, paid executive director.

(c) Jurisdiction population over 5001: full-time, paid executive director.

(4) Maintain the eligible organization's program boundaries/primary focus area on the historic downtown commercial core. To meet this criteria, it shall be demonstrated that at least fifty percent of buildings/structures within the eligible organization's defined geographic boundaries must be fifty years of age or older.

(5) Maintain an active volunteer board of directors representing downtown stakeholders to oversee the organization.

NEW SECTION

WAC 25-50-050 Main street program—Maintain eligibility status. To maintain its designation as a Washington main street community, the Washington main street community must successfully fulfill the following:

(1) Annually, submit to the WSMSP the minutes of the annual meeting of the Washington main street community's board of directors.

(2) Complete and submit to the WSMSP the following reports/documents:

(a) Quarterly reports that track key performance measures as prescribed by the department and progress of the Washington main street community.

(b) The annual WSMSP report.

(c) As may be requested by the department, provide documentation of compliance with policies and status reporting.

(3) The Washington main street community's executive director presence and participation is mandatory at the following:

(a) Annual State Historic Preservation & Main Street Conference;

(b) Two of three Main Street Network Leadership Meetings

If for good cause the executive director is unable to attend one of the required meetings, the executive director shall appoint a member of the Washington main street community's board of directors or staff to attend the meeting on her/his behalf.

NEW SECTION

WAC 25-50-060 Main street program—Status withdrawal and reinstatement. (1) If a Washington main street community fails to comply with these rules, the department may send that program a written initial warning. The initial warning will identify the noncompliance and place the local main street program on probationary status. The Washington main street community shall be reevaluated by the department ninety days following the initial warning. If the Washington main street community has failed to correct the noncompliance, the department may issue a final warning. If the Washington main street community is not in compliance within ninety days after the final warning is sent, the department may either:

(a) Terminate the Washington main street community's letter of agreement and Washington main street community

designation, and discontinue all WSMSP services and activities; or

(b) At its sole discretion, the department will place the Washington main street community on continued probationary status for up to an additional ninety days. At the end of the ninety days, the department shall consider the facts and the circumstances underlying the noncompliance, and whether the Washington main street community has made substantial progress toward correcting the noncompliance.

(2) If Washington main street community designation is withdrawn, the local organization may receive reduced WSMSP services. The department of revenue will be notified when a Washington main street community status is withdrawn. However, a eligible organization may reapply for Washington main street community designation after one full calendar year has elapsed from the date of the letter of agreement termination. WSMSP services will resume upon reapplication and written approval by the department of the Washington main street community's designation. Any such reapplication for Washington main street community designation must include documentation that the previous non-compliance has been corrected, or that a change of condition has occurred such that the prior noncompliance is unlikely to reoccur.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 25-50-070 Administrative appeals. (1) An applicant for or holder of main street community status issued under this chapter may request a hearing to contest a denial of application for main street community status under WAC 25-50-050, or a withdrawal of main street community status under WAC 25-50-060.

(2) A request for a hearing shall be made by filing a written application for adjudicative proceeding with the department at the following address: Department of Archaeology and Historic Preservation, P.O. Box 48343, Olympia, WA 98504-8343. The application must be received by the department within twenty-one calendar days of the date of service of the notice of the denial, or withdrawal.

(3) When the department receives an application for adjudicative proceeding, it will immediately notify the director of its receipt and provide the director with a copy of the application and the notice or document being appealed. The director thereupon will designate a presiding officer as follows: The director will designate as presiding officer an administrative law judge assigned by the office of administrative hearings under chapter 34.12 RCW.

(4) Upon being designated, the presiding officer shall notify the requestor and the director of his or her name and business address and provide any other information required by chapters 34.05 RCW, 10-08 WAC, or this chapter.

(5) Upon receiving the notice required in subsection (4) of this section, the director shall immediately transmit to the presiding officer the application, together with any accompanying documents provided by the requester, and a copy of the notice or other document being appealed.

NEW SECTION

WAC 25-50-080 Adjudicative proceedings. (1) The department hereby adopts the model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, for use in adjudicative proceedings of agency action under this chapter.

(2) "Service" and "filing" of documents in adjudicative proceedings are defined as in RCW 34.05.010 and WAC 10-08-110.

(3) In the case of a conflict between the model rules of procedure and this chapter, the rules in this chapter shall take precedence.

(4) All factual determinations shall be based on the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The burden in all proceedings is a preponderance of the evidence.

(a) In all proceedings contesting the denial of an application or re-application for main street community status, the burden shall be on the applicant to establish that the application meets all applicable requirements and standards.

(b) In all proceedings contesting the withdrawal of main street community status, the burden is on the department to prove the alleged factual basis set forth in the notice.

WSR 16-21-008

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 7, 2016, 7:59 a.m., effective November 7, 2016]

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

Purpose: The department is amending chapter 16-610 WAC to:

- Increase the certificate of permit fee from \$1.00 per book to \$5.00 per book;
- Abolish the equine bill of sale book;
- Clarify the requirement that all veterinarians certified to issue livestock inspection certificates must pass a written exam; and
- Modify the language to increase clarity and conform with current industry practices.

Citation of Existing Rules Affected by this Order: Amending WAC 16-610-015, 16-610-018, 16-610-060, 16-610-066, and 16-610-085.

Statutory Authority for Adoption: RCW 16.57.160.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-16-115 on August 3, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

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

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

Date Adopted: October 7, 2016.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-015 Certificate of permit. (1) A certificate of permit (WSDA form #7020), commonly known as a "transportation permit" or a "haul slip," must accompany livestock:

- (a) In transit (cattle);
 - (b) Consigned to a public livestock market, special sale, or livestock processing facility; or
 - (c) Upon entry into a certified feedlot (cattle).
- (2) The certificate of permit may not be used as a bill of sale for cattle.
- (3) A certificate of permit may be purchased by contacting the department at 360-902-1855 or livestockid@agr.wa.gov. The price is ~~\$(1.00)~~ 5.00 for a book of twenty-five.
- (4) The certificate of permit must include:
 - (a) Owner's name and address;
 - (b) Livestock breed;
 - (c) Sex of the animal;
 - (d) Brand or other methods of livestock identification;
- and
- (e) Any other information that the director considers necessary.

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-018 Proof of ownership documents. (1) Proof of ownership for cattle and horses may be established at the time of a livestock inspection by presenting one of the following documents:

- (a) An official livestock inspection certificate issued by the director.
- (b) A duplicate certificate or certified copy of an original inspection document issued by the director.
- (c) For cattle only, a self-inspection certificate completed prior to June 10, 2010, and any other information required in WAC 16-610-016.
- (d) An official inspection certificate issued by another state or province that maintains a livestock inspection program.
- (e) Registration papers on purebred horses.
- (f) Registration papers on purebred cattle if the brand is not recorded in this state.
- (g) For horses only, a bill of sale. ~~((Department form #7092 Equine Bill of Sale may be used and may be purchased by contacting the department at 360-902-1855. The purchase price of an Equine Bill of Sale is \$1.00 for a book of twenty-~~

~~five.))~~ A sample equine bill of sale is available by accessing the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.

(h) A certificate of veterinary inspection issued by a state that does not maintain a livestock inspection program. Vaccination/test tags and the animal description must be verifiable and match the document.

(2) Only original inspection certificates, official duplicate certificates, or certified copies of inspection certificates are acceptable. The name of the livestock owner must appear on the document that is submitted. Carbon copies, faxed copies or photocopies will not be accepted except for registration papers on purebred livestock.

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-060 Veterinarian certification. (1) The director may certify veterinarians, who are licensed and accredited in Washington state and who comply with the requirements of this section, to issue livestock inspection certificates.

(2) Veterinarians licensed and accredited in Washington state who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

- (a) The full name and principal business address of the individual applying for certification;
- (b) The applicant's Washington state veterinary license number;
- (c) The geographic area in which the applicant will issue inspection certificates for livestock;
- (d) A statement describing the applicant's experience with large animals, especially cattle and horses;
- (e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;
- (f) The signature of the applicant; and
- (g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of thirty-five dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certificate was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of thirty-five dollars per applicant.

(5) All veterinarians applying for certification or renewal of certification must ~~((successfully))~~ complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;

- (b) Reading of brands or other marks on animals;
- (c) Completion of official documents; and
- (d) Review of satisfactory ownership documents.

(6) The director will maintain a list of veterinarians certified to perform livestock inspections. Interested parties may request a copy of the list (~~(from))~~ by contacting the department (~~(by calling))~~ at 360-902-1855 or livestockid@agr.wa.gov.

(7) Inspections by certified veterinarians are conducted upon request and provided at the discretion of the veterinarian.

(8) Certified veterinarians must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-066 Replacement copies of brand inspection documents. (1) Individuals can request replacement copies of inspection documents issued by the director which are held by the department.

(2) All requests for replacement copies will be submitted on AGR Form 930-7093 to the department. This form is available on the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.

(3) A twenty-five dollar fee will be charged per document for replacement copies and must accompany the form.

(4) Replacement copies will only be issued to a requestor whose name appears as the buyer, seller, or owner on the document being requested.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-085 Production brands. (1) Before a production brand may be used in Washington state, it must be recorded with the director according to the provisions of chapter 16.57 RCW and in the same manner as an ownership brand.

(2) Forms to record a brand may be obtained (~~(from the director))~~ by contacting the department at 360-902-1855, e-mailing livestockid@agr.wa.gov or accessing the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.

(3) The director will not charge a fee to record a production brand if the person recording the brand has already paid to record an ownership brand.

(4) Production brands are not recognized for ownership purposes, recorded for ownership purposes, or accepted for livestock inspection purposes.

(5) Dairy cattle: Owners may use any digit or combination of digits as a production brand to identify their dairy cattle as long as the brand is located on the neck or between the hock and the stifle of a hind leg.

(6) Beef cattle: Owners may use a production brand to identify beef cattle but only when the cattle also bear a brand that is currently recorded to the owner of the animal.

(a) On beef cattle, production brands may be located on either side of the animal on the shoulder or hip.

(b) Any numeral digit or combination of digits may be used for a beef cattle production brand as long as they do not conflict with currently recorded ownership brands.

(7) Only Arabic numerals can be used for production brands.

WSR 16-21-013

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 7, 2016, 11:22 a.m., effective November 14, 2016]

Effective Date of Rule: November 14, 2016.

Purpose: The department has developed a new unemployment benefit payment system which will allow a number of functions to be performed by claimants online, in addition to telephone or paper. Rules are amended to incorporate these changes, streamlining applications for benefits and making services more user-friendly for claimants and employers. In addition, policy changes which could not be adopted due to the limitations of the legacy computer system, or changes made that are consistent with good public policy, are adopted.

Citation of Existing Rules Affected by this Order:
Amending WAC 192-270-035, 192-250-025, 192-140-005, 192-140-010, 192-140-020, 192-140-030, 192-140-040, 192-140-070, 192-140-075, 192-140-080, 192-140-085, 192-140-090, 192-140-100, 192-140-120, 192-140-130, 192-140-140, 192-140-145, 192-140-200, 192-140-210, 192-140-220, 192-230-010, 192-230-020, 192-230-030, 192-230-040, 192-230-090, 192-230-100, 192-230-110, 192-230-130, 192-120-010, 192-120-020, 192-120-030, 192-120-035, 192-120-050, 192-110-005, 192-110-010, 192-110-020, 192-110-050, 192-110-095, 192-04-170, 192-04-190, 192-310-035, 192-240-015, 192-04-060, 192-130-050, 192-130-060, 192-130-065, 192-130-070, 192-130-080, 192-220-010, 192-220-040, 192-220-050, 192-180-060, 192-220-060, 192-220-080, 192-270-070, 192-100-015, 192-100-030, 192-100-035, 192-100-070, 192-100-075, 192-200-055, and 192-320-080.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 16-15-079 on July 19, 2016.

A final cost-benefit analysis is available by contacting Juanita Myers, Employment Security Department, 212 Maple Park Avenue, P.O. Box 9046, Olympia, WA 98503, phone (360) 902-9665, fax (360) 902-9605, e-mail jmyers@esd.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 63, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 63, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 63, Repealed 0.

Date Adopted: October 3, 2016.

Lisa Marsh
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation. (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file ~~((a written))~~ an appeal or a petition for hearing by using the department's online services, by mailing it to the address indicated on the determination notice or other appealable document, or ~~((sending it))~~ by ~~((fax))~~ faxing it to the ~~((address or))~~ fax number indicated on the determination notice or other appealable document.

The appeal or petition for hearing must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal ~~((and/or))~~ or petition for hearing ~~((shall))~~ must be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, in accordance with the provisions of WAC 192-04-170. The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review ~~((shall))~~ must be filed in accordance with the provisions of RCW 50.32.025.

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply. (1) The written petition for review ~~((shall))~~ must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will

acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also ~~((mail))~~ send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party ~~((shall be mailed))~~ must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be received by the commissioner's review office within fifteen days of the date of ~~((mailing of))~~ the acknowledged petition for review. An informational copy ~~((shall))~~ must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof ~~((shall))~~ must:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposition of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

AMENDATORY SECTION (Amending WSR 10-20-082, filed 9/29/10, effective 10/30/10)

WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review. (1) A written petition for reconsideration and argument in support thereof may be filed within ten days of the date of ~~((mailing or delivery of))~~ the decision of the commissioner ~~((, whichever is the earlier))~~. It ~~((shall be mailed))~~ must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555 ~~((, and to))~~. It should also be sent to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-100-015 Equity and good conscience defined. (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

- (a) General health, including disability, competency, and mental or physical impairment;
- (b) Education level, including literacy;
- (c) Whether there is current income from work or a business;
- (d) History of unemployment;
- (e) Future earnings potential;
- (f) Business structure, if appropriate;
- (g) Marital status and number of dependents, including whether other household members are employed;
- (h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;
- (i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this

section, except for the presumption established under (j) of this subsection.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-100-030 Week defined. The term "week" means a period of seven consecutive calendar days beginning on Sunday at ~~((12:01))~~ 12:00 a.m. and ending at ~~((midnight))~~ 11:59 p.m. the following Saturday.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-100-035 Effective date of claim defined. As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed, or, when requested, back-dated to a calendar week prior to the calendar week in which the application is filed as provided in WAC 192-110-095. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-100-070 Conditional payments. (1) A conditional payment is:

(a) Payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits((-)); or

(b) Payment issued when you have provided reasonable evidence of authorization to work in the United States but the department is paying benefits pending verification by the federal government.

(2) Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

~~((2))~~ (3) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

~~((3))~~ (4) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160 (3).

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-100-075 Domestic partner. For purposes of this title:

(1) "Domestic partner" ((or "state registered domestic partner")) means:

(a) Two adults who ((meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered)) have registered as a domestic partnership ((by)) with the Washington secretary of state; or

(b) A legal union of two persons of the same sex that was formed in and is legal in any state or jurisdiction.

(2) "Domestic partner" does not include partnerships formed by individuals of the opposite sex except as provided by RCW 26.60.030 or the equivalent law of another state.

NEW SECTION

WAC 192-100-037 Mail. (1) The term "mail" is interchangeable with the term "send," which means:

(a) To send or deliver by means of the postal service or other delivery service; or

(b) To transmit, deliver, or distribute by e-mail or other electronic services.

(2) Subsection (1)(b) of this section does not apply to WAC 192-04-210, which requires mailing through the postal service or other delivery service if not personally served.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-110-005 Applying for unemployment benefits—General. (1) **How do I apply for benefits?** ((a)) You may apply for benefits by:

((i)) ~~Calling the unemployment claims center listed in your local telephone directory; or~~

((ii)) (a) Using the department's ~~((internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.))~~ online services; or

(b) Calling the unemployment claims center; or

(c) If you have a physical or sensory disability, or are in unusual circumstances that make filing by telephone or internet difficult, the commissioner may authorize other methods of applying for benefits.

(2) **When can I apply?**

(a) You may apply online using the department's online services at any time.

(b) You may apply by telephone (excluding state holidays) during the days and hours designated by the department ~~((, even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.~~

~~((b) You may apply on the internet at any time)).~~

(3) ~~((When is my claim effective? Your claim is effective on the Sunday of the week in which you file it.~~

(4)) **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) Social Security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past ~~((two years))~~ eighteen months. Other information may be ~~((requested))~~ required in individual circumstances.

~~((5))~~ (4) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks.

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

WAC 192-110-010 Applications for benefits by interstate claimants. (1) **What is an "interstate claimant"?** An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the "paying state." For example:

(a) You are an interstate claimant if you live outside of Washington and file a claim against Washington. Washington will be the paying state on your claim.

(b) You are an interstate claimant if you live in Washington and file a claim against another state. The other state will be the paying state on your claim.

(2) **Where can I apply for benefits?** You can apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military during the past ~~((two years))~~ eighteen months, you must physically be in the state of Washington to apply for benefits against Washington.

(3) **How do I apply for benefits?** ~~((a))~~ Use the department's online services or call the unemployment claims ((telecenter)) center in Washington. If you worked in any state other than Washington within the last ((two years, an agent will)) eighteen months, the department will provide you with information to help you decide which state will pay your claim.

~~((b))~~ (a) If Washington will pay your claim, you may apply using the department's online services or an agent will take your application for benefits over the telephone;

~~((c))~~ (b) If another state will pay your claim, ~~((an agent will tell you))~~ the department will provide you with contact information for that state regarding how to file your claim with that state.

~~((d))~~ ~~((If you worked only in Washington during the previous two years, you may apply for benefits on the internet.))~~

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must continue with that claim as long as benefits are available before you can establish a new claim against another state. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, you must file it directly with the state that is paying your claim:

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If ~~((mailed))~~ filed using the postal service or shipping service, your appeal will be considered filed on the postmarked or shipping date.

(b) If another state is paying your claim, file your appeal directly with that state.

All appeal hearings will be conducted by the state that is paying your claim. The paying state will notify you of the date, time, and telephone number or location of the hearing.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-110-020 How will the department verify my identity? When you apply for benefits, ~~((we will ask you questions based on information in our records, such as your work history))~~ the information you provide must be sufficient for the department to confirm your identity to its satisfaction.

(1) If we can verify your identity with ~~((these questions))~~ this information, we will file your application for benefits.

(2) If we cannot verify your identity ~~((through questioning))~~, we will ~~((send you a verification form:))~~ request additional verification.

(a) If ~~((you complete and return the verification form to the department, and it))~~ the additional information provides satisfactory evidence of your identity, your claim will be effective based on the date ~~((of your first telephone call:))~~ you first applied for benefits, unless it is backdated as provided in WAC 192-110-095.

(b) If ~~((you do not complete or return the verification form, or it))~~ the additional information does not satisfy the department of your identity, we will deny your benefits.

AMENDATORY SECTION (Amending WSR 10-12-026, filed 5/24/10, effective 6/24/10)

WAC 192-110-050 How do I reopen my claim? (1) If you ~~((do not file a claim for one or more weeks))~~ have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) ~~((If it has been fewer than four weeks since you last claimed, you must))~~ You may reopen your claim:

(i) By using the department's online services; or

(ii) ~~((By calling the unemployment claims (telecenter and asking an agent to reopen your claim))~~ center.

(b) ~~((If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet or by calling the unemployment claims telecenter. However, you must do so before the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.))~~ You must reopen your claim before the end of the week.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department ~~((except that the effective date for any prior week claimed under WAC 192-140-005(4) will be Sunday of that week))~~ to reopen your claim, unless you ask the department to backdate your reopening date to a prior week. The department will not backdate your reopening date unless you show good cause for not reopening your claim earlier, except as provided in WAC 192-140-005.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, ~~((acting on advice directly from a department employee or its agent on whom a reasonable person would rely:))~~ incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or

(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information ~~((, and you knew or should have known of your redetermination or appeal rights and failed to exercise them)).~~

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

WAC 192-110-112 Applying for a combined wage claim. (1) **What is a combined wage claim?** A combined wage claim is a claim based on wages earned in two or more states. For purposes of this section, "state" means the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

(2) **Where can I file a combined wage claim?** You can file a combined wage claim against any state in which you have base period wages and qualify for benefits based on combining those wages with wages from another state(s). The state against which you file your claim will be the paying state.

(3) **What is the paying state?** The "paying state" is the state against which you file your combined wage claim. You must have base period employment in that state and qualify for unemployment benefits under that state's laws using combined employment and wages.

(4) **Can I file a combined wage claim against Washington?** Yes. To file a combined wage claim against Washington, you must have base period wages in Washington which, combined with your wages from another state(s), establish a valid Washington claim. If you file your claim against Washington, Washington will be the paying state.

(5) **Do I have to reside or physically be in Washington to file a combined wage claim?** No. The state where you are a resident is not relevant in deciding the paying state.

(6) **Who decides which state is the paying state for a combined wage claim?** You are responsible for deciding which state will be the paying state. If you are potentially eligible for a combined wage claim and you contact the department (~~(an agent will provide you)~~) using online services or by phone, you will be provided with:

(a) General information about the combined wage program;

(b) Your options for filing a regular or combined wage claim against Washington or another state(s); and

(c) Contact information for other state(s) in which you worked during your base period.

(7) **Am I required to file a combined wage claim?** No. Filing a combined wage claim is voluntary. You may choose to file a claim using only wages from a single state.

NEW SECTION

WAC 192-110-115 May I cancel my claim? (1) You will be allowed to cancel your claim within thirty days of the date you applied for benefits if no payment has been issued to you on the claim. The department will advise you of the advantages and disadvantages of canceling a claim.

(2) At his or her discretion, the commissioner may permit cancellation of a claim beyond thirty days of the date you applied for benefits, but only in extreme and unusual circumstances. The denial of a request to cancel a claim beyond thirty days of the date of application is not subject to appeal.

(3) You will not be allowed to cancel your claim if benefits have been paid on the claim, unless the department filed the claim in error.

(4) As provided in RCW 50.20.160, if the department has denied your benefits before canceling your claim, the denial will remain in effect. The department will not make a new decision based on the same issue in a subsequent claim.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-120-010 Claimant information booklet.

(1) The department will publish and post on its web site an information booklet for unemployment insurance claimants that provides basic information on the laws, rules, and procedures for unemployment insurance benefit claims. Single copies of the booklet will be available to the public at no charge.

(2) The department will send claimants who file an application for benefits a link to the booklet by e-mail or other electronic means. If the department does not have the ability or authorization to notify a claimant by e-mail or other electronic means, the department will (~~(mail)~~) send the claimant a written notice containing the link to the web address for the booklet. The department will mail a hard copy of the booklet to any claimant who requests it.

(3) The department will maintain a brief descriptive web address to help claimants locate the booklet online. The link to the booklet will be prominently displayed on the department's web site.

(4) Each claimant is responsible for filing weekly claims and following all instructions as required in the booklet for the duration of the claim unless other specific information is (~~(given)~~) provided to the claimant (~~(in writing)~~) by the department.

(5) The department will assist any person who advises the department that he or she is having difficulty understanding the booklet.

(6) If a claimant does not ask for help in understanding the booklet, he or she will be presumed to understand its contents and held responsible for any failure to act as directed by the booklet.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-020 Presentation of benefit rights. (1)

When you file an application for benefits, the department will give you a presentation of benefit rights. At a minimum, the presentation of benefit rights will include information regarding:

(a) Your statement of wages and hours (monetary determination);

(b) Instructions on filing weekly claims;

(c) Reemployment services; and

(d) How eligibility questions are adjudicated.

(2) You will be responsible for filing claims and providing information as directed in the presentation of benefit rights unless other (~~(written)~~) instructions are given to you after the presentation of benefit rights.

(3) If there is a conflict between written and spoken information (~~(given)~~) provided to you, the written information will (~~(apply)~~) prevail.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-030 Will I be told if my eligibility for benefits is questioned? Whenever we have a question regarding whether you (the claimant) are eligible for benefits, we will give you adequate notice before making a decision. "Adequate notice" means we will tell you:

(1) Why we question your eligibility for benefits;

(2) That you have the right to a fact-finding interview about your eligibility for benefits and that the interview will be conducted by telephone except:

(a) When you specifically ask to be interviewed in person(~~(s)~~); or

(b) In unusual circumstances where we decide an in-person interview is necessary(~~(s)~~);

(3) That you can have someone, including an attorney, assist you at the interview;

(4) That you can have witnesses on your behalf, provide evidence, and cross-examine other witnesses or parties;

(5) That, prior to the interview, you may ask for copies of any records or documents we have that we will consider in making a decision about your eligibility for benefits;

(6) The date by which you must reply to the notice (which will be no earlier than five days plus reasonable mailing time (~~(plus five working days)~~), if any); and

(7) That if you do not respond to the ~~((written))~~ notice by the date shown, your benefits may be denied and you may have to repay any benefits already paid to you.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-120-035 How will adequate notice be provided? ~~((+))~~ When you file your weekly claim for benefits by telephone, you will receive a verbal notice if there is a question about your eligibility for benefits. When you file your weekly claim for benefits by ~~((internet))~~ using the department's online services, a statement will be ~~((printed))~~ displayed online that there is a question about your eligibility for benefits. ~~((2) If you do not contact the department by the last working day of the week in which your claim was filed, a written notice will be mailed to your most recent address in our files. The date by which you must reply to this written notice will be no earlier than reasonable mailing time plus five working days, starting from the date your weekly claim for benefits was filed.)~~ You will be provided a minimum of five days, plus reasonable mailing time, if any, to respond to the notice or statement.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-120-050 Conditional payment of benefits.

(1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

(2) At your request, we will hold conditional payments when you are eligible for conditional payment under WAC 192-100-070.

(3) Payment will be issued for any payments withheld under subsection (2) of this section if we determine you are eligible for benefits.

(4) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-050 Notice of filing of application—RCW 50.20.150. Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be ~~((mailed))~~ sent to the applicant's most recent employer as stated by the applicant. Any employer who receives such a notice and has information which might make the applicant ineligible for benefits ~~((shall))~~ must report this information to the ~~((employment security))~~ department ~~((at the address))~~ as indicated on the notice. The information must be reported within ~~((ten days of))~~ five days, plus reasonable mailing time, if any, beginning on the date the notice was ~~((mailed))~~ sent. If the employer does not reply within ~~((ten days))~~ this time frame, the department may allow benefits to the individual, if he or she is otherwise eligible.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be ~~((mailed))~~ sent to:

(a) The claimant's last employer, and

(b) Any prior employer where it has been less than ten weeks since the job separation or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, the department will ~~((mail))~~ send a notice to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, the department will ~~((mail))~~ send a notice to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), the department will ~~((mail))~~ send a notice to the last employer reported by the claimant and to any prior employer from whom the claimant has a potentially disqualifying separation who has not previously been notified.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-065 ~~((Mailing addresses for))~~ Sending the notice to employer. The department will ~~((mail))~~ send notices to employers required by RCW 50.20.150 and WAC 192-130-060 as follows:

(1) The department will ~~((mail))~~ send the notice to the last employer of the claimant in the following order:

(a) If the employer requests that the department ~~((mail))~~ send correspondence related to unemployment benefits to a specific address, the department will ~~((mail the))~~ send a notice to the last employer directly to that address; or

(b) If the employer has notified the department that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the department will ~~((mail the))~~ send a notice to the last employer directly to that firm; or

(c) If an employer has provided the department with ~~((a mailing))~~ an address for tax purposes, the department will ~~((mail the))~~ send a notice to the last employer directly to that address; or

(d) If the employer has not provided the department with ~~((a mailing))~~ an address, the department will ~~((mail the))~~ send a notice to the last employer to the address provided by the claimant.

(2) The department will ~~((mail the))~~ send a notice to any base year employer who has reported wages to the depart-

ment to the ~~((employer's mailing))~~ address ~~((of record))~~ provided by the employer for tax purposes.

(3) ~~((The))~~ A notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be ~~((mailed))~~ sent in the order specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-070 ((Mailing of)) Sending eligibility determinations—RCW 50.20.180. (1) The department will ~~((mail))~~ send an eligibility decision based on a job separation issue to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) To any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work ~~((, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct))~~.

(2) The department will ~~((mail))~~ send an eligibility decision based on an issue other than a separation from employment to an employer if the employer provides relevant information about the claimant's eligibility for a specific week.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-130-080 Procedure—Separation issues.

(1) The department will not make a decision on a separation issue (RCW 50.20.050 or 50.20.066) until both the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, about the separation.

(2) If an employer does not respond to the notice within ~~((ten))~~ five days, plus reasonable mailing time, if any, as required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the employer ~~((mails))~~ sends separation information to the ~~((unemployment claims telecenter identified on the notice))~~ department after the end of the ~~((ten-day))~~ response period, but before the decision has been made, the department will consider that information before making a decision.

(4) If the employer ~~((submits))~~ sends separation information to the department within thirty days after a decision has been ~~((mailed))~~ sent, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the ~~((mailing-of))~~ date the notice required by WAC 192-130-060 was sent will be considered a request for relief of benefit charges under RCW 50.29.021.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-140-005 Filing weekly claims for benefits.

(1) **How do I file my weekly claim for benefits?** You may file your claim using the department's ~~((automated systems. The term "automated systems" includes the department's unemployment information and weekly claims telephone line or the department's internet web site. You may also file a paper claim. At the agency's discretion, you may be allowed to file a weekly claim with the assistance of a claims center representative))~~ online services or by calling the department's claims center. If you have a physical or sensory disability or are in unusual circumstances that make filing by telephone or online difficult, the commissioner may authorize other methods of filing a weekly claim.

(2) **When do I file my weekly claim?** You must file a claim for every week ~~((for which))~~ you want to be paid or have counted as your waiting week. Every week begins at ~~((12:01))~~ 12:00 a.m. on Sunday and ends at ~~((midnight))~~ 11:59 p.m. on Saturday. You must file your claim *after* the end of the week(s) you are claiming.

(a) File your claim using online services after 12:00 a.m. Sunday following the week you are claiming. If you file by electronic means, your claim is considered filed on the date of successful electronic transmission.

(b) File your telephone ~~((or internet))~~ claim after ~~((12:01))~~ 12:00 a.m. Sunday, but before 4:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 4:00 p.m. on the last working day of the week.)

~~((b) If you file by paper,))~~ (c) File your paper claim any time Sunday through Saturday following the week you are claiming. ~~((If you file by mail,))~~ Your claim is considered filed on the postmarked date. ~~((If you file by fax, your claim is considered filed on the date of receipt))~~ if you mail it.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) What happens if I miss a week?

(a) If you do not claim a week, ~~((you must reopen your claim. See WAC 192-110-050.~~

~~((a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the claims center to reopen your claim))~~ and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks prior to the week in which you contact the department to begin claiming again.

(b) If you ~~((have received your first payment and not))~~ do not claim a week, and more than four consecutive weeks have elapsed since you last filed a claim, you ~~((may claim benefits for any of the four weeks prior to the week in which you contacted the claims center to reopen your claim.~~

~~((c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these))~~ must reopen your claim as provided in WAC 192-110-050. The department will not pay you for any unclaimed weeks unless you show good cause for ~~((not contacting the claims center earlier to reopen your claim))~~ the late filing of those claims.

(5) **What information do I have to report?** Your claim must include(~~(:~~

- ~~(a) The Saturday date of the week you are claiming;~~
- ~~(b) Answers to the questions, the claims center cannot process a claim unless all questions are answered;~~
- ~~(c) Your personal identification number if filing by automated system, your signature if you filed in writing or your verbal authorization if you filed with the assistance of a claims center representative;~~
- ~~(d) The amount and source of any pension you are receiving for the week claimed;~~
- ~~(e) Any holiday earnings received during the week claimed;~~
- ~~(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and~~
- ~~(g) Any earnings and the number of hours you worked during the week claimed.~~

~~(6) **What happens if I don't provide this information?** answers to all the questions. The department cannot process a claim ((filed via automated system)) that does not meet ((the)) this requirement((s of subsection (5) of this section and you will receive instructions to contact the claims center. A written claim that does not meet these requirements is incomplete and the department will return it to you with a request for additional information)).~~

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-010 ((Personal identification number-)) Systems security. (1) ~~((The first time you call the unemployment information and weekly claims line to obtain information about your claim or to file a weekly claim for benefits, you must set up a))~~ Your password or personal identification number (PIN)((-This number)) is your electronic signature on all claims filed ~~((by telephone))~~ and its use is equivalent to your signature on written forms.

(2) Security of the password or PIN is your responsibility. You are responsible for any payments made as a result of the use of ~~((this))~~ your password or PIN unless you provide evidence showing that the individual using your password or PIN was not authorized to do so. You must establish a new password, or your PIN must be reset if you forget it or if someone else, including an employee of the department, learns ~~((your PIN))~~ of it. You are responsible for either:

- (a) Accessing the department's online services to establish a new password; or
- (b) Contacting the ((unemployment claims telecenter to set up a new PIN or setting up a new PIN using the department's internet site)) department to reset your PIN.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-140-020 Will I be required to report in person? You may be instructed to report in person for any reason the department deems necessary, such as to receive reemployment services. If you do not report in person, you will be ineligible for benefits ((will be denied)) under RCW 50.20.010 (1)(a) for the week unless:

(1) You have returned to full-time work and cannot report in person, or

(2) You can show you had good cause for not reporting in person. "Good cause" is any factor which would cause another person in similar circumstances to be unable to report in person.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-140-030 What happens if I do not report in person when directed? (1) If you do not report in person when directed to do so, and do not provide information to explain why you did not report in person, the department will presume you failed to report in person without good cause and benefits will be denied under RCW 50.20.010(1).

(2) This denial of benefits is for ~~((definite period of time, which is))~~ the week or weeks in which you failed to report in person.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim? (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

- (a) Report that you had work and earnings for one or more weeks;
- (b) Fail to provide employer name and address; and
- (c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

- (a) You report that you will have earnings for a week not yet claimed;
- (b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and
- (c) Do not respond to a request for information.

(3) The department will ~~((deny benefits under this section))~~ presume you are not unemployed based on RCW 50.20.010(1) and 50.04.310. This ((denial applies only to the week(s) in which work and earnings information is incomplete)) presumption will continue until you provide the department with the information necessary to determine whether you are unemployed within the meaning of the statute.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-070 What happens if I do not establish that I am able to or available for work? (1) If you report that you were not able to work or not available for work in any week or do not report whether you were able to work or were available for work, and do not provide details regarding your ability to or availability for work as requested, the department will presume you are not able or not available for work and benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for ~~((a definite period of time, which is))~~ the week or weeks in which information on your ability to work or availability for work is incomplete.

(2) If you provide information that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed, and you do not provide information regarding your ability to or availability for work, benefits will be denied under RCW 50.20.010 (1)(c).

This denial ~~((is for an indefinite period of time. It))~~ will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work? (1) If you report that you were not actively seeking work in any week or do not report whether you made an active search for work and subsequently fail to report complete job search details and other information when requested, the department will presume you are not actively seeking work and your benefits will be denied under RCW 50.20.010 (1)(c).

(2) For the purpose of this section, "complete job search details" includes those elements that may be required ~~((under))~~ by the department as provided in WAC 192-180-015.

(3) This denial is for ~~((a definite period of time, which is))~~ the week or weeks in which your job search information is incomplete.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-080 What happens if I do not comply with a job search directive? (1) If you have been issued a job search directive as provided in WAC 192-180-010, do not report a job search that meets the requirements outlined in the directive, and you do not provide additional job search information as requested or you respond with information that does not meet these requirements, the department will presume you are not actively seeking work as directed and benefits will be denied under RCW 50.20.010 (1)(c) and 50.20.-240.

(2) This denial is for ~~((a definite period of time, which is))~~ the week or weeks in which your job search information does not meet the specific requirements of the directive.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-085 What happens if I do not respond to a request for information regarding late claim(s)? (1) If you ask to file a claim late as defined in WAC 192-140-005 and do not respond to a request for an explanation of why the claim was filed late, the department will presume that the claim was filed late without good cause and benefits will be denied under RCW 50.20.010 (1)(b) and WAC 192-140-005.

(2) This denial is for ~~((a definite period of time, which is))~~ the week or weeks that were filed late.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-090 What happens if I do not report for reemployment services as provided in RCW 50.20.010 (1)(e)? The commissioner may direct you in writing to report in person for reemployment services.

(1) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member ~~((in good standing))~~ of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005; or

(c) Within the previous year have completed, or are currently scheduled for or participating in, similar services.

(2) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(3) ~~((Sanctions.))~~ **Penalty.** If you have received a directive, and fail to participate in reemployment services during a week, you will be disqualified from benefits for that week unless justifiable cause is demonstrated.

(4) **Justifiable cause.** Justifiable cause for failure to participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions precluding safe travel.

Reasons for absence may be verified. In all such cases, your ability to or availability for work is in question.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work? (1) If you do not respond to a request for information about a discharge from work and if you:

(a) Have not given the department enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with your work. The department will deny benefits under RCW 50.20.066.

(b) Have given the department enough information to contact the employer, the department will not deny benefits unless a preponderance of evidence shows that you were discharged for misconduct connected with your work or the separation was for another disqualifying reason.

(2) If benefits are denied due to misconduct, the denial ~~((is for an indefinite period of time and))~~ will continue for ten

weeks and until you earn ten times your weekly benefit amount in employment that is covered by Title 50 RCW.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-120 What happens if I do not provide information regarding attendance at school? (1) If you or another party notifies the department that you are in school and you do not respond to a request for information regarding school attendance, the department will presume that you are registered for academic instruction of 12 or more credit hours and have a limited attachment to the labor market, and are not available for work. Benefits will be denied under RCW 50.20.095 ~~((and 50.20.010 (1)(e)))~~.

(2) This denial of benefits ~~((is indefinite in nature and))~~ will continue until you establish that you are eligible under RCW 50.20.095 ~~((and 50.20.010 (1)(e)))~~.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-130 What happens if I do not respond to a request for information about holiday ~~((or))~~, vacation ~~((pay))~~, sick, or other paid time off? (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday ~~((or))~~, vacation, sick, or other paid time off pay and the respective amount paid, and do not respond to a request for specific information about the holiday ~~((or))~~, vacation ~~((pay))~~, sick, or other paid time off.

(2) ~~((If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.~~

~~((3))~~) The department will deny benefits under RCW 50.20.010(1) and 50.04.310. This denial applies only to the week(s) in which holiday ~~((or))~~, vacation, paid time off, or sick pay information is incomplete.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment? (1) If your eligibility for benefits is based on services to an educational institution, ~~((your employer has provided information that))~~ evidence shows you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial applies to the period between academic years or terms, and during holiday or vacation periods.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-145 What happens if I do not respond to a request for ~~((pension))~~ information about my retirement pay? (1) The department will presume you are receiving ~~((a pension))~~ retirement pay in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for ~~((a))~~ retirement ~~((pension))~~ pay or your ~~((pension))~~ retirement pay has changed since your last claim; and

(b) You do not respond to the question concerning ~~((pension))~~ retirement pay information when filing your weekly claim.

(2) The department will ~~((deny))~~ reduce benefits under RCW 50.04.323. This ~~((denial))~~ reduction will continue until you provide the information showing that you are ~~((not ineligible))~~ eligible for benefits under RCW 50.04.323.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be reduced under RCW ~~((50.20.010 (1)(e) and))~~ 50.20.130 without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work on one or two days of a week or weeks being claimed; and

(b) The day or days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This ~~((denial is for a definite period of time and))~~ reduction applies only to the day or days for which ~~((you specifically indicate))~~ available information shows you are ineligible for benefits.

(2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and

(b) The days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This denial ~~((for a definite period of time and))~~ applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.

(3) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial ~~((is for an indefinite period of time. It))~~ will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

(4) ~~((If you file a weekly claim with information clearly stating that you do not intend to claim benefits for the week or weeks, benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview.~~

~~This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you do not intend to claim benefits.~~

~~(5)) Any denial of benefits under subsections (2) and (3) of this section will be issued without delay. The department will not issue a written decision when benefits are reduced under subsection (1) of this section.~~

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-210 What happens if I return to full-time work or report hours worked consistent with full-time work? If you report that you have returned to full-time work or report hours worked that are consistent with full-time work for that occupation, this information is sufficient to find that you are no longer an unemployed individual as defined in RCW 50.04.310. ~~((This denial is for a specific period of time, which is the week or weeks for which you report full-time work or hours consistent with full-time work.))~~

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status? If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed ~~((as defined in))~~ and benefits will be denied under RCW 50.04.310 ((and benefits will be denied under RCW 50.20.010)). This denial ~~((is for an indefinite period of time and))~~ will continue until you show you are unemployed as defined under RCW 50.04.310.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011. (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) ~~((during the first payable week))~~ after all wages for the claimant on the current claim have been received. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (cer-

tainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 13-02-008, filed 12/19/12, effective 1/19/13)

WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program? (1) Any ~~((net))~~ income you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(a) Net income based on self-employment must be reported as provided in WAC 192-190-105.

(b) Gross income from any other source must be reported as earnings.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-010 Will I be notified about a potential overpayment? (1) If a potential overpayment exists, the department will provide you with a written overpayment advice of rights explaining the following:

(a) The reasons you may have been overpaid;

(b) The amount of the possible overpayment as of the date the notice is ~~((mailed))~~ sent;

(c) The fact that the department will collect overpayments as provided in WAC 192-230-100;

(d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;

(e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries;

(f) An explanation that if you are not at fault, you may request a waiver of the overpayment; and

(g) A statement that you have ~~((ten))~~ five days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether you are at fault. If you do not provide the information within ~~((ten days))~~ this time frame, the department will make a decision based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed? (1) RCW 50.20.070 provides dollar penalties when fraud is committed and increased disqualification periods when a second, third or subsequent fraud is committed. The

department will decide whether an action is the first, second, third or subsequent occurrence based on the criteria in this section.

(2) Once the department ~~((mails))~~ sends a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the ~~((mailing))~~ date ~~((of))~~ the decision is sent will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is ~~((mailed))~~ sent on June 1 for weeks claimed on April 30. On July 1, a decision is ~~((mailed))~~ sent assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was ~~((mailed))~~ sent.

(3) The department will treat any fraud for weeks filed more than fourteen days after the ~~((mailing))~~ date ~~((of))~~ a prior fraud decision is sent as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is ~~((mailed))~~ sent assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. In addition to the fifteen percent penalty, the disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks and a penalty of fifteen percent beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision? (1) The department will ~~((issue))~~ send a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, mak-

ing the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and a fifteen percent dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is ~~((mailed))~~ sent on August 1 and benefits are denied for the following twenty-six weeks and a fifteen percent penalty is assessed. On August 10, another fraud decision is ~~((mailed))~~ sent which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the twenty-six week denial period begins with ~~((the))~~ August 10 ~~((mailing))~~, the date the second fraud decision is sent.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-060 Will I be notified of my right to appeal the overpayment? (1) The department will ~~((notify))~~ send you and all interested employers ~~((in-writing))~~ information about the overpayment assessment and the right to appeal any of the following elements of the assessment:

- (a) The reason for the overpayment.
- (b) The amount of the overpayment.
- (c) The finding of fault or nonfault.
- (d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

- (a) An employer that provides information to the department which results in an overpayment assessment.
- (b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

- (a) Income and, to the extent available, the income of other household members who contribute financially to the household;
- (b) Expenses; and
- (c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the ~~((10-day))~~ response deadline indicated in the notice, which will be no less than five days plus reasonable mailing time, if any. If you do not provide the information ~~((within 10 days))~~ by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-010 Repayment terms defined. For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement ~~((mailed to your last known address))~~.

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-230-020 How are cash payments and offsets applied to my overpayment? (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

(a) Court costs including, but not limited to, filing fees and surcharges paid to the court for their official services, and surcharges and fees collected by the court for distribution to other programs or funds. It does not, however, apply to surcharges paid to the court under RCW 40.14.027 which are applied under (f) of this subsection.

(b) Interest.

(c) Penalties based on fraud.

(d) Charges for payments dishonored by nonacceptance or nonpayment.

(e) Overpaid benefits.

~~((e))~~ (f) Surcharge assessed under RCW 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

(4) The department will charge twenty-five dollars for each dishonored payment you submit. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-030 How is the minimum payment calculated? The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is ~~((mailed))~~ sent, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is ~~((mailed))~~ sent, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-040 When are interest charges added to my overpayment? (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) In addition to the principal amount, interest will accrue based on the total of the overpayment including, but not limited to, interest, penalties, court costs, charges for dishonored payments, and related charges or fees.

(5) If the overpayment includes both fraud and nonfraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

~~((5))~~ (6) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or

collection of interest charges for overpayments not based on fraud.

~~((6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.)~~ (7) Interest is calculated on a monthly cycle as follows:

(a) For fraud overpayments, interest accrues beginning on the date the determination of fraud is effective.

(b) For nonfraud overpayments, interest accrues immediately, beginning after the due date.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-090 May I repay an overpayment by offset against my benefits? (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. If the new balance available on your current benefit year is greater than the balance of your overpayment, you can choose the amount of benefits to be offset from each payment. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-100 What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-230-030, the principal amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, ~~((and))~~ court costs, and charges for dishonored payments will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim ~~((cancelled))~~ canceled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of ~~((cancelling))~~ canceled an existing claim to file a new claim. See WAC 192-110-115.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC 192-230-030. If you have missed a portion of two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim ~~((. However, you may request the overpayment be repaid at))~~, or such other percentage you request, up to one hundred percent of benefits payable ~~((for each week you claim))~~. The ~~((fifty))~~ percent ~~((deduction))~~ deducted is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-110 May I negotiate with the department to repay less than the full amount of my benefit overpayment?—RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (4) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(4) A negotiated settlement for less than the full amount owed will not be considered when:

(a) The overpayment decision was issued by a state other than Washington; or

(b) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(5) The department's decision to accept or reject a settlement offer is not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer ~~((at a later date))~~ if your circumstances change.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-130 How do I make a negotiated settlement offer? (1) You may contact the department's unemployment benefits collection unit (~~(in writing or by telephone)~~) and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(2) Settlement offers may also be made by authorized department staff.

AMENDATORY SECTION (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-015 How to apply for extended benefits. File your application for extended benefits by using the department's online services or by placing a telephone call to (~~(an unemployment claims telecenter)~~) the department. The commissioner can authorize other filing methods in unusual circumstances or for the convenience of the department.

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-025 What are the requirements for employers with an approved shared work plan? (1) **What information am I responsible for providing to my employees?** When your shared work plan is approved, you are responsible for telling your affected employees:

- (a) They are approved for participation in the shared work program;
- (b) How to apply for shared work benefits; and
- (c) How to file their weekly claims.

(2) **What employee fringe benefits do I have to provide while participating in the shared work program?**

(a) You must continue to provide your affected employees with health benefits as though their weekly benefits had not been reduced.

(b) You must continue to provide your affected employees with retirement benefits for defined contribution and defined benefit pension plans under the Internal Revenue Service code. You must maintain these benefits for your shared work employees as though their weekly hours had not been reduced.

(c) You must continue to provide paid vacation, holiday, and sick leave to your affected employees under the same terms and conditions as before their hours were reduced.

(d) If health, retirement, or leave benefits change for your other employees, you can change them for your shared work employees as well.

(e) Other benefits offered to your employees, such as long-term disability and life insurance, are optional. You may choose to provide these benefits but they are not a requirement for participation in the shared work program.

(3) **What is required if the business name is changed?** You must report any change in your business name to the shared work program unit within ten working days.

(4) **What is required if the designated employer representative is changed?** You must notify the shared work unit of the change within ten working days.

(5) **Can I modify an approved shared work plan?** You may request to add additional employees or units of your business after the approved plan start date. Adding new employees or units to an approved plan is subject to the same eligibility review that applied to the original plan. You must notify the shared work unit of any change to the information on your application in writing within ten working days.

(6) **What other information am I responsible for giving the department?** In addition to the application for participation in the program, you are responsible for verifying the information on the shared work payments report sent by the department. You must report any discrepancies to the shared work unit (~~(in writing)~~) by using the department's online services or by fax within ten working days.

(7) **How many shared work plans may I have?**

(a) You may have more than one shared work plan. We will review each shared work plan application to see if it meets the eligibility requirements. Even if a previous plan was approved, this does not mean subsequent plans are automatically approved.

(b) If your business is approved for a shared work plan, but your employees do not claim shared work benefits during the life of the plan, it will still be treated as one plan.

(c) The commissioner may, at his or her discretion, deny approval of subsequent plans.

(8) **What if my ESD number changes?** You must report the change to the shared work unit within ten working days. A change in ESD number represents a change in employer and the existing shared work plan will be canceled. The successor employer may submit a new shared work plan application to the department for review.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the informational notice (~~(mailed or e-mailed)~~) sent to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the informational notice is considered your notification of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-070 Modifying a training plan. (1)

You must notify the department by using the department's online services or by mail prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

- (a) Your course of study or major;
- (b) The educational institution;
- (c) The projected start or end dates for the training; or
- (d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b) ~~(-)~~ through (g). Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. How-

ever, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), if you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and are subject to recovery under RCW 50.20.190.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages. (1) If an employer does not report hours worked and a former employee applies for benefits, the department will ~~((divide the wages earned))~~ estimate the hours worked as follows:

(a) For Washington reportable wages, the department will divide the reported wages by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked;

(b) For all out-of-state wages, the department will divide the reported wages by the federal minimum wage to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim.

(3) If the claim is voided or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

NEW SECTION

WAC 192-320-077 In which quarter will the department charge employers for unemployment benefits paid to claimants? Benefits will be charged to the quarter containing the first day of the week claimed, regardless of when the department actually pays the claimant for the week claimed.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 ~~((2))~~ (b) and 50.29.021 ~~(3)(a)~~. (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection ~~((2))~~ (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that

should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

WSR 16-21-024

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed October 10, 2016, 2:21 p.m., effective November 10, 2016]

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

Purpose: The proposed changes will provide cleanup to WAC 446-16-070 to require a process control number to be entered when fingerprints are taken.

Citation of Existing Rules Affected by this Order: Amending WAC 446-16-070.

Statutory Authority for Adoption: RCW 43.43.745 and 10.97.090.

Adopted under notice filed as WSR 16-17-063 on August 15, 2016.

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

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

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

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

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

Date Adopted: September 28, 2016.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-070 Report contents—General. The report of disposition must be made on forms provided by the section or shall be transferred electronically on forms approved by the section. The disposition report must include all arrest details as they appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and process control number (PCN)

~~((should))~~ must be indicated on the disposition report if ~~((known))~~ fingerprints were taken.

WSR 16-21-025

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed October 10, 2016, 2:24 p.m., effective November 10, 2016]

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

Purpose: Certain changes are needed to provide clarity and consistency in terms used throughout the chapter and to ensure that the language aligns with recent changes to the statute.

Citation of Existing Rules Affected by this Order: Amending WAC 448-16-020, 448-16-040, 448-16-080, and 448-16-120.

Statutory Authority for Adoption: RCW 46.61.506.

Adopted under notice filed as WSR 16-17-065 on August 15, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: September 28, 2016.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-020 Approval of breath test equipment.

(1) Pursuant to RCW 46.61.506, the following instruments are approved for the quantitative measurement of alcohol in a person's breath:

- (a) The DataMaster;
- (b) The DataMaster CDM; and
- (c) The ~~((Dräger))~~ Dräger or Dräger Alcotest 9510.

(2) Pursuant to RCW 46.61.506, the following thermometers are approved:

(a) Mercury in glass thermometers with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade.

(b) Digital thermometer system contained within the Guth 2100 wet bath simulator.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-040 Foreign substances, interference, and invalid samples. (1) A determination as to whether a subject has a foreign substance in his or her mouth will be made by either an examination of the mouth or a denial by the person that he or she has any foreign substances in their mouth. A test mouthpiece is not considered a foreign substance for purposes of RCW 46.61.506.

(2) If a subject is wearing jewelry or ornamentation pierced through their tongue, lips, cheek, or other soft tissues in the oral cavity, they will be required to remove this prior to conducting the breath test. If the subject declines to remove the jewelry or ornamentation, they will be deemed to have a physical limitation rendering them incapable of providing a valid breath sample ~~((and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308))~~.

(3) If during a breath test, interference is detected, this will invalidate the test. The subject will be required to repeat the test. A subject whose breath registers the presence of interference on two or more successive breaths shall be deemed to have a physical limitation rendering them incapable of providing a valid breath sample ~~((and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308))~~.

(4) In the event that the instrument records an "invalid sample" result at any point during the subject's test, that subject's test should be readministered, after again determining that the subject has no foreign substance in their mouth as outlined in WAC 448-16-040(1), and repeating the fifteen minute observation period.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-080 Instructors. The state toxicologist or technician will certify persons found to be competent and qualified, as "instructors." Instructors are authorized to administer breath tests for alcohol concentration using approved instruments and are further authorized to train and certify as operators, according to outlines approved by the state toxicologist, those persons the instructor finds qualified to administer the breath test utilizing approved instruments. Instructors who are also certified as PBT technicians may instruct other individuals as PBT technicians according to the approved outlines.

If an instructor fails or refuses to demonstrate to the state toxicologist, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-120 Permits ~~((cards))~~. Pursuant to RCW 46.61.506, the state toxicologist will authorize the issuance to persons deemed qualified as "instructors," "operators," "solution changers" or "technicians," a ~~((wallet-sized card))~~ permit bearing his or her name and designation. ~~Permits ~~((cards))~~~~ will bear the signature or facsimile signature of the state tox-

icologist. Such permits ~~((cards))~~ will expire three years after the date on the ~~((card))~~ permit, unless renewed for a like three-year period. Operators whose authorization expires may take recertification training within ninety days following expiration of their prior certification, but are not certified to perform any evidential breath tests during that period. Once ninety days have elapsed after the expiration of authorization, the operator must repeat the basic certification training.

WSR 16-21-026

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed October 10, 2016, 2:27 p.m., effective November 10, 2016]

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

Purpose: Certain changes are needed to provide clarity and consistency in terms used throughout the chapter.

Citation of Existing Rules Affected by this Order: Repealing WAC 448-15-050; and amending WAC 448-15-010, 448-15-020, 448-15-030, 448-15-040, and 448-15-060.

Statutory Authority for Adoption: RCW 46.61.506.

Adopted under notice filed as WSR 16-17-064 on August 15, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 5, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 1.

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

Date Adopted: September 28, 2016.

John R. Batiste
Chief

Chapter 448-15 WAC

ADMINISTRATION OF PRELIMINARY BREATH ~~((ALCOHOL SCREENING TEST))~~ TESTING

NEW SECTION

WAC 448-15-005 Definitions. (1) Certifying agent means persons certified by the state toxicologist, certified technician, or certified instructor as a preliminary breath test instrument (PBT) technician.

(2) Operator means a person certified as an evidential breath test instrument operator as described in chapter 448-16 WAC and trained and authorized to perform the tests for a PBT instrument as outlined in this chapter.

(3) PBT instrument means preliminary breath test instrument.

(4) PBT technician means a person trained and certified as competent and qualified to certify a PBT instrument according to the protocol approved by the state toxicologist.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in ~~((the following sections))~~ this chapter:

~~((Alcosensor))~~ (1) Alco-Sensor III (Intoximeters, St. Louis, MO).

~~((Alcosensor))~~ (2) Alco-Sensor FST (Intoximeters, St. Louis, MO).

(3) Any other instruments approved by the National Highway Traffic Safety Administration (NHTSA) will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-020 Use of test results. ~~((The devices))~~ (1) Valid results from the PBT instruments described in WAC 448-15-010 are approved for use ((in establishing probable cause)) to determine that a subject has consumed alcohol and establish probable cause to place a person under arrest for alcohol related offenses or probable cause to support issuance of a search warrant for blood to test for alcohol.

(2) This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

(3) For purposes of this section, valid results are considered those obtained ~~((from following the approved protocol, by a trained))~~ by an operator following the approved testing protocol described in WAC 448-15-030 while using an approved ((device)) PBT instrument which has been certified according to the rules described in WAC ((448-15-030)) 448-15-040.

(4) Valid results will show ((to a reasonable degree of scientific certainty;)) the test subject's breath alcohol concentration. ((Valid results are suitable to assist in establishing probable cause to place a person under arrest for alcohol related offenses;)) These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

~~((This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308;))~~

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-030 Test protocol. The operator must perform the test according to the policies and procedures approved by the state toxicologist ~~((The operator will perform)),~~ using the following test protocol:

(1) The operator ~~((shall))~~ will advise the subject that this is a voluntary test, and that it is not an alternative to any evidential breath alcohol test.

(2) The operator ~~((shall))~~ will determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT instrument.

(3) Ensure a blank test result is obtained.

(4) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(5) Observe the results.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-040 Certification. Any PBT instrument used ((as described in the preceding sections;)) must ((be)) have been certified ((at least every)) within the previous six months. In order to certify a PBT instrument as accurate, the certifying ((agency)) agent must follow a protocol approved by the state toxicologist. ((Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed;))

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-060 PBT technicians. ~~((Persons trained according to outlines approved by the state toxicologist, in the proper procedures for certifying PBT instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on))~~ (1) PBT technicians will be issued a permit after:

(a) Successful completion of the training which must be renewed every three years((-Persons)); or

(b) Being certified as evidential breath test instrument technicians as described in chapter 448-16 WAC ((are also certified to perform all the duties of PBT technicians)).

(2) PBT technicians will perform periodic certification and maintain records on PBT instrument certification.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 448-15-050 PBT operators.

WSR 16-21-046
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 15-08—Filed October 12, 2016, 11:42 a.m., effective November 12, 2016]

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

Purpose: The department of ecology is adopting amendments to chapter 173-182 WAC, Oil spill contingency plan. The regulations enhance oil spill contingency plan requirements for hazardous liquids pipelines required to submit oil spill contingency plans under chapter 90.56 RCW, and for primary response contractors that support the implementation of pipeline plans. The amendment of this rule requires pipelines to update their contingency plans and submit them for ecology approval.

The rule requirements were last updated for pipelines in 2006. At that time the pipeline planning standards were developed to align with the marine terminal standards. In Washington pipelines exist in both marine and inland areas. After several years of implementing the rule, we have identified the need to update our standards to ensure that required oil spill response equipment is appropriate for the pipeline risks and operating environments (marine and inland). We also feel the need to better incorporate and embrace available technology and geo-referenced data in our planning requirements.

Additional details of this rule making:

- Updates definitions to ensure clarity and consistency with existing federal regulations.
- Clarifies the worst case discharge calculation for pipelines.
- Creates a new pipeline geographic information planning standard which uses geo-referenced data to support preparedness planning and initial decision making during pipeline oil spills.
- Enhances air monitoring requirements for pipelines to ensure safety of oil spill responders and the general public.
- Enhance our spills to ground requirements to ensure rapid, aggressive and well-coordinated responses to spills to ground which could impact ground water.
- Updates the pipeline planning standard requirements to ensure equipment required is appropriate for the environments pipelines may impact.
- Expands the best achievable protection review cycle to facilities and pipelines.
- Makes other changes to clarify language.

Citation of Existing Rules Affected by this Order:
Amending chapter 173-182 WAC.

Statutory Authority for Adoption: Chapter 90.56 RCW.

Adopted under notice filed as WSR 16-11-112 on May 18, 2016.

Changes Other than Editing from Proposed to Adopted Version: The following describes the changes from the proposed rule language to the adopted rule language and ecology's reasons for making them. Where a change was made solely for editing or clarification purposes, we did not include it in this summary.

WAC 173-182-030 Definitions, updated the definition of "transmission pipeline" to remove the outdated reference to the federal definition which is no longer in statute.

In the "worst case spill" definition the minimum time to detect the release and shut down the pipeline, for planning purposes, was changed from twenty minutes to thirty minutes to reflect public concerns about pipeline leak detection systems and response times. The thirty minute minimum sets a reasonable baseline for establishing the worst case spill planning volume. This volume is used to determine the boom, storage, and recovery assets the pipeline must own or contract and reference in the contingency plan.

WAC 173-182-135 Phase in language for pipeline plan holders, changed the phase in for the air monitoring requirements from twenty-four months to twelve months to reflect comments received during the public comment period.

WAC 173-182-640 Process for public notice and opportunity for public review and comment period, updated to reflect concerns that the public comment period section should make explicit that notice and comments will be available for plans that are significantly changed, in addition to those that are updated for their five year review period.

WAC 173-182-720 Evaluation criteria, updates to this section to align with the 2016 version of the national preparedness for response exercise program guidance document.

A final cost-benefit analysis is available by contacting Shon Kralej, Economics and Regulatory Research, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6774, fax (360) 407-6989, e-mail shon.kralej@ecy.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 3, Amended 2, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 0.

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

Date Adopted: October 12, 2016.

Maia D. Bellon
Director

**PART I: PURPOSE, APPLICABILITY, AUTHORITY,
(~~APPLICABILITY~~) AND DEFINITIONS**

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-010 Purpose. The purpose of this chapter is to establish covered vessel and facility oil spill contingency plan requirements (Part II), drill and equipment verification requirements (Part III), primary response contractor standards (Part IV) and recordkeeping and compliance information (Part V).

(1) The provisions of this chapter, when followed, should be implemented and construed so that they will:

(a) Maximize the effectiveness and timeliness of oil spill response by plan holders and response contractors;

(b) Ensure continual readiness, maintenance of equipment and training of personnel;

(c) Support coordination with state, federal, tribal and other contingency planning efforts;

(d) Provide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills; and

(e) (~~For covered vessels;~~) Provide the highest level of protection that can be met through the use of best achievable technology and those staffing levels, training procedures, and operational methods that constitute best achievable protection (BAP) as informed by the BAP five year review cycle (WAC 173-182-621) and as determined by ecology.

(2) The planning standards described in this chapter do not constitute clean-up standards that must be met by the holder of a contingency plan. Failure to remove a discharge within the time periods set out in this (~~section~~) chapter does not constitute failure to comply with a contingency plan, for purposes of this (~~section~~) chapter or for the purpose of imposing administrative, civil, or criminal penalties under any other law so that all reasonable efforts are made to do so. In a spill or drill, deployment of equipment and personnel shall be guided by safety considerations. The responsible party must take all actions necessary and appropriate to immediately collect and remove, contain, treat, burn and disperse oil entering waters of the state and address the entire volume of an actual spill regardless of the planning standards.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-015 Applicability. (1) This chapter applies to owners and operators of onshore facilities, offshore facilities, and covered vessels required to submit oil spill contingency plans under chapters 90.56 and 88.46 RCW.

(2) This chapter applies to any person submitting a contingency plan on behalf of a covered vessel, multiple covered vessels, onshore facilities and offshore facilities, or any combination thereof.

(3) This chapter applies to response contractors that must be approved by ecology before they may serve as primary response contractors (PRCs) for a contingency plan.

(4) This chapter does not apply to public vessels as defined by this chapter, mobile facilities or to spill response

vessels that are exclusively dedicated to spill response activities when operating on the waters of this state.

(5) Railroads are facilities for the purposes of contingency planning under RCW 90.56.210. Railroad contingency planning regulations are described in chapter 173-186 WAC.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-030 Definitions. (1) (~~"Aerial oil spill spotter" (spotter) means personnel trained to:~~

~~(a) Direct vessels to the heaviest concentrations of oil;~~

~~(b) Direct dispersant resources;~~

~~(c) Direct in situ burn resources; and~~

~~(d) Observe document and report the effectiveness of response operations.~~

~~(2))~~ "Aerial observer" means a trained observer that monitors, records and reports the spill characteristics including the shoreline impacts, area oiled, color, and thickness of the oil. Observers also provide data to the command post through the development of detailed maps of the area oiled and the resources in the field as well as other photographs, videos, or documents developed to support planning.

(2) "Aerial oil spill spotter" (spotter) means personnel trained to:

(a) Direct vessels to the heaviest concentrations of oil;

(b) Direct dispersant resources;

(c) Direct in situ burn resources; and

(d) Observe, document and report the effectiveness of response operations.

(3) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. Ecology's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering:

(a) The additional protection provided by the measures;

(b) The technological achievability of the measures; and

(c) The cost of the measures.

(4) "Best achievable technology" means the technology that provides the greatest degree of protection. Ecology's determination of best achievable technology will take into consideration:

(a) Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development;

(b) Processes that are currently in use; and

(c) In determining what is best achievable technology, ecology shall consider the effectiveness, engineering feasibility, and the commercial availability of the technology.

(5) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the (~~(2000)~~) ASTM International F 1523-94 (~~(2001)~~) 2007) and ASTM International F 625-94 (~~reap-~~

proved (~~(2000)~~ 2006), and the *Resource Typing Guidelines* found in (~~chapter 13 of the 2000 Oil spill field operations guide~~) the Western Response Resource List (WRRL) user manual.

(6) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(7) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(8) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(9) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or other provider or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that: Identifies personnel, equipment and services capable of being provided by the primary response contractor or other provider within stipulated planning standard times; acknowledges that the primary response contractor or other provider commits the identified resources in the event of an oil spill.

(10) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(11) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(12) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(13) "Director" means the director of the state of Washington department of ecology.

(14) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(15) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(16) "Ecology" means the state of Washington department of ecology.

(17) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

~~((17) "Ecology" means the state of Washington department of ecology.))~~

(18) "Emergency response towing vessel" means a towing vessel stationed at Neah Bay that is available to respond to vessel emergencies upon call out under the contingency plan. The emergency response towing vessel shall be available to the owner or operator of the covered vessel transiting

to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks Light, Vancouver Island, Canada.

(19) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that

~~((+))~~ transfers oil in bulk to or from a tank vessel or pipeline ~~((+ and~~

~~((+))~~, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(20) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(21) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(22) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(23) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(24) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(25) "Lower Columbia River" means the Columbia River waters west of Bonneville Dam.

(26) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(27) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(28) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to

the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(29) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(30) "Nonpersistent or group 1 oil" means:

(a) A petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(i) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(ii) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(b) A nonpetroleum oil with a specific gravity less than 0.8.

(31) "Nonpetroleum oil" means oil of any kind that is not petroleum-based, including but not limited to: Biological oils such as fats and greases of animals and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

(32) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(33) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(34) "Oil" or "oils" means oil of any kind that is liquid at ~~((atmospheric temperature and))~~ twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, ~~((biological oils and blends,))~~ and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section ~~((101(14)))~~ 102(a) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(35) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(36) "Onshore facility" means any facility, as defined in subsection ~~((14))~~ (19) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(37) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems ASTM International F 625-94 (reapproved 2006).

(38) "Operational period" means the period of time scheduled for execution of a given set of operational actions as specified in the incident action plan. The operational period coincides with the completion of one planning cycle.

(39) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(40) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(41) "Passive recovery" means a tactic that uses absorbent material to mitigate impacts to shorelines.

(42) "Persistent oil" means:

(a) Petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(i) Group 2 - Specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(ii) Group 3 - Specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(iii) Group 4 - Specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(iv) Group 5 - Specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(b) A nonpetroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(i) Group 2 - Specific gravity equal to or greater than 0.8 and less than 0.85;

(ii) Group 3 - Specific gravity equal to or greater than 0.85 and less than 0.95;

(iii) Group 4 - Specific gravity equal to or greater than 0.95 and less than 1.0; or

(iv) Group 5 - Specific gravity equal to or greater than 1.0.

(43) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(44) "Control point" means a location along the pipeline, or rail line, pre-identified as an initial control or containment strategy to minimize impacts of spilled oil. The objective of a control point may be to contain, collect, divert or exclude oil from further impacting sensitive environmental, economic or cultural resources. Control points are designed and maintained by plan holders.

(45) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

~~((45))~~ (46) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural

resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

~~((46))~~ (47) "Plan holder" means a person who submits and implements a contingency plan consistent with RCW 88.46.060 and 90.56.210 on the person's own behalf or on behalf of one or more persons. Where a plan is submitted on behalf of multiple persons, those covered under that plan are not considered plan holders for purposes of this chapter.

~~((47))~~ (48) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

~~((48))~~ (49) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

~~((49))~~ (50) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

~~((50)) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.)~~

(51) "Recovery system" means a skimming device, storage, work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(52) "Regional vessels of opportunity response group" means a group of nondedicated vessels participating in a vessel of opportunity response system to respond when needed and available.

~~((52))~~ (53) "Resident" means the spill response resources are staged at a location within the described planning area.

~~((53))~~ (54) "Response zone" means a geographic area either along a length of a pipeline or including multiple pipelines, containing one or more adjacent line sections, for which the operator must plan for the deployment of, and provide, spill response capabilities. The size of the zone is determined by the operator while considering available capability, resources, and geographic characteristics.

(55) "Responsible party" means a person liable under RCW 90.56.370.

~~((54))~~ (56) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

~~((55))~~ (57) "Shorelines of statewide significance" means those shorelines of statewide significance defined in the Shoreline Management Act (SMA), RCW 90.58.030.

(58) "Spill" means an unauthorized discharge of oil which enters waters of the state.

~~((56))~~ (59) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

~~((57))~~ (60) "Systems approach" means the infrastructure and support resources necessary to mobilize, transport, deploy, sustain, and support the equipment to meet the planning standards, including mobilization time, trained person-

nel, personnel call out mechanisms, vehicles, trailers, response vessels, cranes, boom, pumps, storage devices, etc.

~~((58))~~ (61) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

~~((59))~~ (62) "Technical manual" means a manual intended to be used as a planning document to support the evaluation of best achievable protection systems for potential response capability of plan holder owned and PRC dedicated and nondedicated equipment.

~~((60))~~ (63) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(64) "Transmission pipeline" means all parts of a pipeline whether interstate or intrastate, ((subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991,)) through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units metering and delivery stations and fabricated assemblies therein, and breakout tanks.

~~((61)) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.~~

(62) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

~~((63))~~ (65) "Umbrella plan" means a single plan submitted on behalf of multiple covered vessels that is prepared by a nonprofit corporation.

~~((64))~~ (66) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(67) "Vessels of opportunity response system" means nondedicated vessels and operating personnel, including fishing and other vessels, available to assist in spill response when necessary. The vessels of opportunity are under contract with and equipped by contingency plan holders to assist with oil spill response activities including, but not limited to, on-water oil recovery in the near shore environment, the placement of oil spill containment booms to protect sensitive habitats, and providing support of logistical or other tactical actions.

~~((65)) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.~~

~~((66))~~ (68) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

~~((67))~~ (69) "Western Response Resource List (WRRL)" means a regional equipment list established and maintained by spill response equipment owners in the north-west area.

(70) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, response zones, or volume of the largest breakout tank. For each it is the largest volume determined from the following three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

For planning purposes, the total time to detect the release and shutdown the pipeline should be based on historic discharge data or, in the absence of such historic data, the operator's best estimate. At a minimum the total time to detect and shut down the pipeline, must be equal to or greater than thirty minutes.

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks (~~(without)~~ within a single secondary containment system.

Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume in the contingency plan.

~~((68) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.))~~

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-120 Submitting a contingency plan.

(1) Plan holders shall submit plans to ecology no less than sixty-five days prior to their planned date for beginning of operations in Washington.

(2) The plan holder shall submit two copies of the plan and all appendices. Electronic submission of plans is encouraged, provided it is in an electronic format acceptable to ecology. In the case of electronic submission, only one copy is necessary.

(3) Once approved, plan holders shall resubmit their plans to ecology every five years for review and approval.

(4) ~~((The plans and all subsequent updates shall be delivered to:~~

~~Department of Ecology~~

~~Spill Prevention, Preparedness, and Response Program~~

~~Preparedness Section, Contingency Plan Review~~

~~Mailing address:~~

~~P.O. Box 47600~~

~~Olympia, WA 98504-7600~~

~~Physical Address:~~

~~300 Desmond Drive~~

~~Laeey, WA 98503)) Ecology will maintain mailing~~

~~address and electronic submittal instructions on the agency web site.~~

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-130 Phase in language for vessel and facility plan holders. (1) This section applies to those plan holders who, on the effective date of this chapter, have approved or conditionally approved plans, and response contractors with approved applications. Each update must contain all necessary content and meet the requirements of this chapter.

(2) For existing approved facility plan holders within six months after the effective date of this chapter, all facility plan holders must update their plans to comply with the following sections as applicable to the facility:

(a) Binding agreement (WAC 173-182-220).

(b) Contingency plan general content (WAC 173-182-230 (8)), claims procedures.

(c) Contingency plan general content (WAC 173-182-230 (4)(c)(i) through (v)), products handled.

(d) Facility spills to ground notifications (WAC 173-182-264).

(e) Planning standards for dispersants (WAC 173-182-325).

(f) Planning standard for Group 5 Oils (WAC 173-182-324).

(g) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(3) For existing approved tank vessel plan holders and vessel umbrella plan holders, the following is required, as applicable to the plan holder:

(a) Within six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Binding agreement (WAC 173-182-220).

(ii) Contingency plan general content (WAC 173-182-230 (3)(b)(ii)).

(iii) Contingency plan general content (WAC 173-182-230 (5)(f) and (g)).

(iv) Contingency plan general content (WAC 173-182-230 (6)(a)(i) through (vii) and (7)).

(v) Contingency plan general content (WAC 173-182-230 (8)), claims procedures.

(vi) Aerial surveillance planning standard (WAC 173-182-321(2)), Additional surveillance assets.

(vii) Planning standard for dispersants (WAC 173-182-325).

(viii) Planning standard for Group 5 Oils (WAC 173-182-324).

(ix) Requirements for vessel umbrella plan holders maintaining additional agreements for supplemental resources (WAC 173-182-232).

(x) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(b) Within eighteen months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 1 - Cape Flattery/Strait of Juan De Fuca.

(ii) Aerial surveillance planning standard (WAC 173-182-321(1)), Helicopter/fixed wing.

(iii) Dedicated on-water storage (WAC 173-182-335), at least twenty-five percent of the total worst case discharge requirement.

(iv) San Juan County planning standard (WAC 173-182-370), four hour planning standard.

(v) Neah Bay staging area (WAC 173-182-395), four hour planning standard.

(vi) Covered vessel planning standard for shoreline cleanup (WAC 173-182-522).

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(c) Within thirty-six months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 2 - San Juan Islands/North Puget Sound.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 4 - Lower Columbia River.

(iii) Provide proposal for ecology review of the aerial surveillance planning standard (WAC 173-182-321(3)), Helicopter/fixed wing with forward looking infrared. Plan holder shall have an additional twelve months to have this asset staged and all plan updates finalized as applicable.

(iv) Covered vessel plan holder's technical manual requirement (WAC 173-182-349).

(v) Commencement Bay Quartermaster Harbor planning standard (WAC 173-182-380), four hour planning standard.

(vi) Cathlamet staging area (WAC 173-182-415), four hour planning standard.

(vii) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(d) Within forty-eight months after the effective date of this chapter, all tank vessel plan holders and vessel umbrella plan holders must update their plans to comply with the following sections:

(i) Vessels of opportunity planning standard (WAC 173-182-317), Region 6 - Grays Harbor.

(ii) Vessels of opportunity planning standard (WAC 173-182-317), Region 3 - South Puget Sound and Central Puget Sound.

(iii) Vessels of opportunity planning standard (WAC 173-182-317), Region 5 - Admiralty Inlet, Hood Canal and North Puget Sound.

(iv) Grays Harbor planning standard (WAC 173-182-450), four hour planning standard.

(v) To the extent to which plan holders rely on PRC applications to demonstrate compliance for plan holder, PRC applications must also be updated correspondingly.

(4) Within eighteen months after the effective date of this chapter, all primary response contractors must update their applications to comply with the following section: Primary response contractor application content, submittal and review (WAC 173-182-810).

(5) Each plan update will be given a thirty day public review and comment period. Ecology will approve, disapprove, or conditionally approve the plan update no later than sixty-five days from the update submittal date.

NEW SECTION

WAC 173-182-135 Phase in language for pipeline plan holders. (1) This section applies to those pipeline plan holders who, on the effective date of this chapter, have approved or conditionally approved plans. Each plan update must contain all necessary content and meet the requirements of this chapter.

(2) Within twelve months after the effective date of this chapter:

(a) Update the description of the response zone and worst case discharge volume and calculations in the plan;

(b) Update the plan to demonstrate compliance with:

(i) Planning standards for storage (WAC 173-182-335);

(ii) Transmission pipelines that may impact shorelines of statewide significance (WAC 173-182-365);

(iii) Pipeline tank farms (WAC 173-182-366);

(iv) Planning standards for pipelines carrying crude oil (WAC 173-182-323);

(v) Best achievable protection review cycle (WAC 173-182-621); and

(vi) Update the plan to demonstrate compliance with the pipeline air monitoring planning standard (WAC 173-182-535).

(3) Within twenty-four months from the effective date of this chapter: Update the plan to demonstrate compliance with the geographic information planning standard (WAC 173-182-515).

(4) To the extent to which plan holders rely on PRC applications to demonstrate compliance for the plan holder, PRC applications must also be updated.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-140 Plan maintenance. At least once annually, plan holders shall review the entire plan for accuracy and either:

(1) Update and ~~((distribute))~~ submit the amended page(s) of the plan to ecology for review and approval; or

(2) If no plan changes are needed, send a letter to ecology confirming that the existing plan is still accurate.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-142 Significant changes to approved plans require notification. (1) At any point during the five year approval period, if there is a temporary or permanent significant change in the personnel or response equipment described in the plan, the plan holder shall:

(a) Notify ecology in writing within twenty-four hours of the change; and

(b) Provide both a schedule for the prompt return of the plan to full operational status and a proposal for any backfill to compensate for the temporary significant change. This proposal shall be reviewed by ecology.

(2) Changes which are considered significant include:

(a) Loss of equipment that results in being out of compliance with any planning standard;

(b) If greater than ten percent of available boom, storage, recovery, dispersants, in situ burn or shoreline clean-up equipment is moved out of the homebase as depicted on the WRRL;

(c) Transfers of equipment to support spill response for out-of-region spills;

(d) Permanent loss of initial response personnel listed in command and general staff ICS positions provided in the plan;

(e) Permanent loss of personnel designated as the binding agreement signer;

(f) Changes in normal operating procedures as described below:

(i) For facilities, changes in the oil types handled; permanent changes in storage capacity; changes in handling or transporting of any product; permanent changes in oil processing; and

(ii) For vessels, changes in the oil types handled.

(g) Changes in equipment ownership if used to satisfy a plan holder planning standard; or

(h) Modification or discontinuing of any mutual aid, letter of intent or contract agreement.

(3) Notification by facsimile or e-mail will be considered written notice.

(4) Failure to report changes in the plan could result in the loss of plan approval.

(5) If the proposed change to the plan is to be made permanent, the plan holder then shall have thirty calendar days from notification to ecology to distribute the amended page(s) of the contingency plan to ecology for review and approval.

(6) If ecology finds that, as a result of a change, the plan no longer meets approval criteria; ecology may place conditions on approval or disapprove the plan.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-150 Post-spill review and documentation procedures. Plan holders are required to conduct post-spill review procedures to review both the effectiveness of the plan and make plan improvements. Debriefs with ecology and other participating agencies and organizations may be appropriate if((:)), unified command has been established

during a spill((:)), and are required when significant plan updates are identified or significant lessons can be recorded and implemented.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-230 Contingency plan general content. (1) Contingency plans must include all of the content and meet all the requirements in this section.

(2) In Washington state, the NWACP serves as the state-wide master oil and hazardous substance contingency plan required by RCW 90.56.060. Plan holders shall write plans that refer to and are consistent with the NWACP.

(3) All contingency plans must include the following:

(a) Each plan shall state the federal or state requirements intended to be met by the plan.

(b) Each plan shall state the size of the worst case spill.

(i) For transmission pipelines, more than one worst case spill volume for different line sections or response zones on the entire pipeline may be submitted to ecology for consideration. The methods and calculations used to determine the worst case discharge volumes must be included in the plan.

(ii) For vessel umbrella plans that enroll both tank vessels and nontank covered vessels and that rely on supplemental resources for approval, specify the worst case discharge volume and product type for both tank and nontank covered vessels for each port covered by the contingency plan.

(iii) For multiple facilities using a single plan, separate worst case spill volumes are required for each facility.

(c) Each plan shall have a log sheet to record revisions and updates to the plan. The log sheet shall identify each section amended, including the date of the amendment, verification that ecology was notified and the name of the authorized person making the change. A description of the amendment and its purpose shall also be included in the log sheet, or filed as an amendment letter to be inserted in the plan immediately after the log sheet.

(d) Each plan shall have a cross-reference table reflecting the locations in the plan of each component required by this chapter.

(e) Each plan shall have the PRC's name, address, phone number, or other means of contact at any time of the day.

(i) A contract or letter summarizing the terms of the contract signed by the PRC, shall be included in the plan.

(ii) If the entire contract is not submitted, that document shall be available for inspection, if requested by the department.

(iii) For mutual aid agreements that a plan holder relies on to meet the planning standards, the plan shall include a copy of the agreement and describe the terms of that document in the plan.

(iv) If a plan holder relies on a PRC or other contractor to staff ICS positions for the spill management team, then the commitment must be specified in writing.

(v) If the entire contract for additional spill management team support is not included in the plan, that document shall be made available for inspection, if requested by ecology.

(f) Each plan must contain the procedures to track and account for the entire volume of oil recovered and oily wastes

generated and disposed of during spills. The responsible party must provide these records to ecology upon request.

(4) Additional facility plan content.

Facility plans shall include:

- (a) The name, location, type and address of the facility;
- (b) Starting date of operations;
- (c) Description of the operations covered by the plan:

(i) List the oil handling operations that occur at the facility location.

(ii) Inventory all tanks and list the tank capacity.

(iii) All oil(s) or product(s) handled by name and include; density, gravity, API, oil group number, and sulfur content (sweet/sour).

(iv) Include a written description and map indicating site topography, storm water and other drainage systems, mooring areas, pipelines, tanks, and other oil processing, storage, and transfer sites and operations.

(v) A description of the geographic area that could be impacted from a spill at the location based on a forty-eight hour worst case spill trajectory analysis.

(vi) For pipelines, a narrative describing how the response zone was identified shall be submitted as part of the plan.

(5) Additional vessel plan content. Except as provided in subsections (6) and (7) of this section, vessel plans shall also include:

(a) Name of each vessel covered under the plan;

(b) The name, location, and address of the owner or operator;

(c) Official identification code or call sign;

(d) Country of registry;

(e) All ports of call or areas of expected operation in Washington waters;

(f) List all oil(s) or product(s) by name and include; density, gravity, API, oil group number, sulfur content (sweet/sour) and general ship capacity for amounts carried as cargo or fuel;

(g) Description of the operations covered by the plan; and

(h) A diagram indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations.

(6) Plans covering multiple vessels with different owners shall also include the following:

(a) In lieu of providing vessels names, call signs and country of registry, plan holders shall maintain accurate enrollment or member lists with vessel specific information provided by covered vessels and shall provide ecology twenty-four hour access to the enrolled vessels list via the internet in a format acceptable to ecology. The list shall be updated daily, or at a minimum every three days. The list must at a minimum include the following:

(i) Vessel name;

(ii) Vessel type;

(iii) Worst case discharge oil type and quantity;

(iv) The name and API gravity of the densest oil being handled on the enrolled vessels;

(v) Qualified individual/spill management team;

(vi) Agent; and

(vii) Protection and indemnity (P&I) club.

(b) Plans covering multiple vessels shall include a list of the types of vessels and the typical oil types by group and volumes. In addition, vessel diagrams indicating cargo, fuel, and ballast tanks and piping, power plants, and other oil storage and transfer sites and operations shall be available for inspection by ecology. The procedure for the plan holder to acquire vessel diagrams needs to be documented in the plan.

(7) Umbrella plans shall list the name of the entities that provide supplemental equipment.

(8) Plans shall include concise procedures to establish a process to manage oil spill liability claims of damages to persons or property, public or private, for which a responsible party may be liable.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-240 Field document. (1) Each plan shall contain a field document which lists time-critical information for the initial emergency phase of a spill and a substantial threat of a spill. The owner or operator of the covered vessel or facility shall make the field document available to personnel who participate in oil handling operations and shall keep the field document in key locations at facilities, docks, on vessels and in the plan. The locations where field documents are kept must be listed in the plan, provided that plan holders covering multiple persons shall not be subject to enforcement if the owner or operator of an enrolled vessel fails to keep the field documents in the location specified in the plan.

Plans covering multiple persons shall include procedures to ensure each vessel covered by the plan is provided the field document prior to entering Washington waters. This can include by electronic means.

(2) At a minimum, the field document shall contain:

(a) A list of the procedures to detect, assess and document the presence and size of a spill;

(b) Spill notification procedures and a call out list that meets the requirements in WAC 173-182-260 and 173-182-262 or 173-182-264 as applicable; and

(c) A checklist that identifies significant steps used to respond to a spill, listed in a logical progression of response activities.

NEW SECTION

WAC 173-182-323 Planning standards for pipelines carrying crude oil. (1) Pipeline plan holders handling, storing or transporting crude oils and diluted bitumen, must have a contract with a PRC that maintains the resources, equipment, and capabilities necessary to respond to an oil that may weather and submerge or sink. Such equipment shall include, but is not limited to, the following:

(a) Sonar, sampling equipment or other methods to locate the oil on the bottom or suspended in the water column;

(b) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(c) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(d) Equipment necessary to assess the impact of such discharges; and

(e) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

(2) The equipment must be capable of being on scene within twelve hours of spill notification.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-335 Planning standards for storage.

(1) Plan holders shall identify both on-water devices and shoreside interim storage locations.

(a) For marine waters, shoreside storage can be identified to meet fifty percent of storage requirements in the tables ~~((below))~~ in WAC 173-182-355 through 173-182-450, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage.

(b) For freshwater environments, shoreside storage can be identified to meet sixty-five percent of the storage requirements in the tables below, if the plan holders can demonstrate that recovered oil can be transported to the shoreside storage.

(2) For covered vessel plan holders, at least twenty-five percent of the total worst case discharge volume at twenty-four hours, from the planning standard tables ~~((below))~~ in WAC 173-182-355 through 173-182-450, must be dedicated to on-water storage.

(3) For facility plan holders, one hundred percent of the storage requirements may be met through shoreside storage assets provided shoreside storage is the most appropriate method for containing recovered oil, given the limitations of geography and local environmental conditions, as required in the tables in WAC 173-182-355 through 173-182-450.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-345 Determining effectiveness of recovery systems. Plan holders and PRCs that own equipment shall provide information for ecology to determine the effectiveness of the recovery systems and how the equipment meets the planning standards. To avoid duplication, plan holders relying upon a PRC to meet the necessary planning standards may reference the information submitted in the PRC's application, as approved by the department. Ecology

will use the criteria in ASTM International F 1780-97 (reapproved ~~((2002))~~ 2010).

Determination of efficiency of recovery systems in varied operating environments and product types:

(1) For all skimmers, describe how the device is intended to be transported and deployed. List the boom and work boats associated with each water based skimming system. Identify the pumps and pumping capacity that will be used to transfer product to storage devices.

(2) For all oil recovery systems that rely on a vessel of opportunity or nondedicated transport asset, include a statement on how the asset would be located and secured. Include in the plan the mobilization time needed to ensure the assets are available, as well as the time needed to set up the oil recovery system, and the personnel that will be used in the operations. This may require longer mobilization time than those found in this chapter.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-365 Transmission pipelines ~~((and pipeline tank farms))~~ that may impact shorelines of state-wide significance. ~~((1) To determine the amount of boom necessary for the two hour standard the plan holder must identify by WRIA, surface waters of the state with the potential to be impacted by a spill from the pipeline.~~

~~((a) To determine the two-hour booming requirements, select the widest river within the WRIA.~~

~~((b) Determine the average river speed at this location.~~

~~((i) For rivers with a current of two knots boom in the amount of three times the widest point in the river that the pipeline could affect.~~

~~((ii) For rivers with a current of three knots the requirement would be for five times the widest point in the river that the pipeline could affect.~~

~~((iii) For rivers with a current of five knots the requirement would be for seven times the widest point in the river that the pipeline could affect.~~

~~((2) Or alternatively, the two hour standard will be two thousand feet of boom.~~

~~((3) Boom required for the two hour standard shall be dedicated to spill response and should be staged in various locations along the pipeline.))~~

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	2,000 feet of boom available at the spill source or downstream of the source could have arrived <u>Alternatively, resources identified to deploy a pipeline control point to keep oil from entering surface waters or penetrating into the ground could have arrived</u>		

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 12,500 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	2 times the EDRC
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	3 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-366 Transmission pipeline tank farms.

Time (hours)	Boom/Assessment	Minimum Oil Recovery Rate % of WCS volume per 24 hours	Minimum Storage in Barrels
1	A safety assessment of the spill by trained crew and appropriate air monitoring could have arrived		
2	2,000 feet of boom available at the spill source or downstream of the source could have arrived Alternatively, resources identified as a pipeline control point to keep oil from entering surface waters or penetrating into the ground could have arrived		
6	Additional 5,000 feet of boom available for containment, recovery or protection could have arrived Alternatively, additional resources identified as a pipeline control point to keep oil from entering surface waters or penetrating into the ground could have arrived	Capacity to recover the lesser of 10% of worst case spill volume or 8,000 barrels within 24-hour period could have arrived	1 times the EDRC
12	Additional 20,000 feet of boom to be used for containment, protection or recovery could have arrived	Capacity to recover the lesser of 15% of worst case spill volume or 36,000 barrels within 24-hour period could have arrived	1 times the EDRC
24	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 20% of worst case spill volume or 48,000 barrels within 24-hour period could have arrived	2 times the EDRC
48	More boom as necessary for containment, recovery or protection	Capacity to recover the lesser of 25% of worst case spill volume or 60,000 barrels within 24-hour period could have arrived	More as necessary to not slow the response

NEW SECTION

WAC 173-182-515 Geographic information planning standards for pipeline plan holders. (1) Plan holders shall create and maintain a geographic information planning tool

that supports the plan holder in mapping and tracking spilled oil, decision making, and enhancing the recovery and removal operations that are described in the plan.

(2) The tool must include the following as applicable to the areas which may be impacted by a pipeline spill:

(a) Pipeline details which include location information for line segments, block valves, break out tanks, containment structures, control stations, safety equipment, pipeline right of way, access points, and pipeline control points;

(b) Sensitive natural, cultural and economic area information including applicable geographic response plans (GRP);

(c) Information about public resources, water intakes, sole source aquifers, existing monitoring wells and drinking water supplies;

(d) Topography of the area; and

(e) Oil spill response equipment staging information.

(3) The tool must be described and referenced in the contingency plan, but is not required to be included in the plan.

(4) The plan holder must commit in writing to utilizing the tool during drills and spills.

(5) The tool must be updated at a minimum once every five years or in response to lessons learned during drill and spill events.

NEW SECTION

WAC 173-182-535 Pipeline planning standards for air monitoring to protect oil spill responders and the public. Plans will include a narrative description of applicable federal, state, and local requirements and the plan holder's resources for conducting air monitoring to protect oil spill responders and the public, including:

(1) A description of how initial site safety assessment for responders will occur;

(2) A description of how work area air monitoring will occur;

(3) A description of how community air monitoring (area wide monitoring) will occur;

(4) A description of air monitoring instruments and detection limits that will be used by responders when monitoring for public safety;

(5) A description of action levels for various oil constituents of concern based on products handled by the pipeline (benzene, H₂S, etc.);

(6) A description of data management protocols and reporting time frames to the unified command;

(7) A description of communication methods to at-risk populations;

(8) A description of how evacuation zones and shelter-in-place criteria are established.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-640 Process for public notice and opportunity for public review and comment period. (1) The purpose of this section is to specify the procedures for notifying the public which includes interested local and tribal governments about contingency plan status and decisions in order to provide opportunities for the public to review and comment.

(2) In order to receive notification of the public review and comment period, interested public, local, and tribal governments must sign up on ~~((a listserv))~~ the ecology e-mail list

(listserv) for posting notice about plan review and comment periods. Ecology's web site will also be used to post notice of public review and comment periods.

(3) Public comment periods must extend at least thirty days. Public notice, review, and comment periods are required in the following circumstances:

(a) Plan submittals for facilities or vessels that have never submitted a plan in Washington;

(b) Plan updates required by WAC 173-182-130 and 173-182-135;

(c) The submittal of plans for five-year review as required by WAC 173-182-120;

(d) Requests for an alternative planning standard in accordance with WAC 173-182-620;

(e) Plan holder requests for drill requirement waivers in accordance with WAC 173-182-740; ~~((and))~~

(f) PRC applications submitted under WAC 173-182-810;

(g) Plan updates for permanent significant changes to approved plans as required in WAC 173-182-142.

(4) Public notice, review, and comment period are not required in the following circumstances:

(a) Routine updates to names, phone numbers, formatting, or forms that do not change the approved content of the plan;

(b) Plan updates to resubmit the binding agreement based on changes to the binding agreement signer; and

(c) Annual plan reviews that result in a letter to ecology confirming that the existing plan is still accurate.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-700 Drill participation, scheduling and evaluation. (1) Plan holders and primary response contractors (PRCs) shall participate in a drill and equipment verification program for the purpose of ensuring that all contingency plan components function to provide, to the maximum extent practicable, prompt and proper removal of oil and minimization of damage from a variety of spill sizes. In Washington, a modified triennial cycle for drills, as found in the National Preparedness for Response ~~((Drill))~~ Exercise Program ~~((PREP))~~ NPREP, is relied on to test each component of the plan.

(2) Plan holders and PRCs shall ensure ecology is provided an opportunity to help design and evaluate all tabletop and deployment drills for which the plan holder desires drill credit. To ensure this, plan holders shall schedule drills on the NWACP area exercise calendar. Scheduling requirements are noted in the table ~~((below))~~ in WAC 173-182-710.

(3) Ecology shall mail a written drill evaluation report for drills to the plan holder following each deployment and tabletop drill. Credit will be granted for drill objectives that are successfully met.

(4) Objectives that are not successfully met shall be tested again and must be successfully demonstrated within the triennial cycle, except that significant failures will be retested within thirty days.

(5) Where plan deficiencies have been identified in the written evaluation, plan holders may be required to make spe-

cific amendments to the plan or conduct additional trainings to address the deficiencies.

(6) A plan holder may request an informal review with ecology of the ecology drill evaluation within thirty days of receipt of the report.

AMENDATORY SECTION (Amending WSR 14-15-076, filed 7/16/14, effective 8/16/14)

WAC 173-182-710 Type and frequency of drills. The following drills shall be conducted within each triennial cycle.

Type of Drill	Frequency Within the Triennial Cycle	Special Instructions	Scheduling Instructions
Tabletop drills	3 - One in each year of the cycle	One of the three shall involve a worst case discharge scenario. The worst case discharge scenario drill shall be conducted once every three years.	Must be scheduled at least 60 days in advance, except the worst case discharge scenario at least 90 days in advance.
Deployment drills	6 - Done two per year	These drills shall include, GRP deployments, testing of each type of equipment to demonstrating compliance with the planning standards.	Scheduled at least 30 days in advance. Except the tank vessel multiplan holder deployment drill which must be scheduled at least 60 days in advance.
Ecology initiated unannounced drills	As necessary	This drill may involve testing any component of the plan, including notification procedures, deployment of personnel, boom, recovery and storage equipment.	No notice.
ERTV Deployment Drill for covered vessels transiting the Strait of Juan de Fuca	1 - One in each three year cycle, this is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.	This drill may involve notifications and tug call out, communications safety, tug demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel and holding position within one hundred feet of another vessel.	Scheduled at least 30 days in advance.
Wildlife Deployment Drill	1 - One in each three year cycle. This is an additional drill unless it is incorporated into a large multiobjective deployment drill.	This drill will be a deployment of wildlife equipment and wildlife handlers.	Scheduled at least 30 days in advance.
Tank vessel multiplan holder deployment drill	1 - One in each three year cycle.	This drill may involve dedicated and nondedicated equipment, vessels of opportunity, multiple simultaneous tactics, and the verification of operational readiness over multiple operational periods.	Scheduled at least 60 days in advance.

(1) Tabletop drills: Tabletop drills are intended to demonstrate a plan holder's capability to manage a spill using the incident command system (ICS). Role playing shall be required in this drill. During all required tabletop drills plan holders must provide a master list of equipment and personnel identified to fill both command post and field operations roles. The master resources list must include:

- (a) Western regional response list identification numbers for all response resources; and
- (b) Personnel names, affiliation, home base and command post or field role.

(2) Once during each three year cycle, the plan holder shall ensure that key members of the regional/national "away" team as identified in the plan shall be mobilized in

state for a drill. However, at ecology's discretion, team members that are out-of-state may be evaluated in out-of-state tabletop drills if ecology has sufficient notice, an opportunity to participate in the drill planning process, and provided that the out-of-state drills are of similar scope and scale to what would have occurred in state. In this case, key away team members shall be mobilized in this state at least once every six years.

(3) Plan holders covering multiple vessels and ecology shall together design a systematic approach to, over time, involve all spill management teams identified in WAC 173-182-230 (6)(a) in tabletop and deployment drills as a best practice to demonstrate the preparedness of enrolled vessel members. These drills will be scheduled by the plan holder or unannounced to be conducted by ecology, at the discretion of ecology. These drills may test any plan components but at a minimum will include notification to the enrolled vessel qualified individual, coordination of supplemental resources under WAC 173-182-232 and the transition from the plan holder spill management team to the enrolled vessel company spill management team.

(4) Equipment deployment drills: Plan holders shall use deployment drills to demonstrate the actions they would take in a spill, including: Notifications, safety actions, environmental assessment, and response equipment deployment.

(a) During the triennial cycle, deployment drills shall include a combination of plan holder owned assets, contracted PRC assets, nondedicated assets, and vessels of opportunity.

(b) Plan holders should ensure that each type of dedicated equipment listed in the plan and personnel responsible for operating the equipment are tested during each triennial cycle. Plan holders must design drills that will demonstrate the ability to meet the planning standards, including recovery systems and system compatibility and the suitability of the system for the operating environment. Drills shall be conducted in all operating environments that the plan holder could impact from spills.

(c) At least twice during a triennial cycle, plan holders shall deploy a geographic response plan (GRP) strategy identified within the plan. If no GRPs exist for the operating area, plan holders will consult with ecology to determine alternative sensitive areas to protect.

(d) Plan holders may request credit for the prebooming of an oil transfer provided the transfer is scheduled as a deployment on the drill calendar. Such credit may only be requested once per triennial cycle.

(5) Plan holders may receive credit for deployment drills conducted by PRCs if:

(a) The PRC is listed in the plan; and

(b) The plan holder operates in the area, schedules on the drill calendar, and participates in or observes the drill.

(6) Additional large-scale multiple tank vessel plan holder equipment deployment drill requirement. Once every three years all tank vessel plan holders, including plan holders that enroll multiple tank vessels, must participate in a multiple plan holder deployment exercise. At least one plan holder shall be the drill planning lead, participate in all the planning meetings and observe the drill. This deployment may include the following objectives:

(a) Demonstration of dedicated and nondedicated equipment and trained contracted personnel;

(b) Demonstration of contracted vessel of opportunity response systems and crew performing operations appropriate to the vessel capabilities;

(c) Demonstration of multiple simultaneous tactics including:

(i) On-water recovery task forces made up of complete systems which demonstrate storage, recovery, and enhanced skimming;

(ii) Protection task forces which deploy multiple GRPs;

(iii) Vessel and personnel decontamination and disposal;

(iv) Deployment of contracted aerial assessment assets and aerial observers to direct skimming operations; and

(v) Personnel and equipment identified for night operations.

(d) Verification of the operational readiness during both the first six hours of a spill and over multiple operational periods.

(7) Additional deployment requirement for vessel plan holders with contracted access to the ERTV. Once every three years plan holders with contracted access to the ERTV must cosponsor a drill that includes deployment of the ERTV, unless ERTV drill credit has already been received under WAC 173-182-242 (1)(e). This drill must be scheduled on the area exercise calendar. The drill shall include at a minimum:

(a) Notifications and tug call out;

(b) Safety and environmental assessment;

(c) Demonstration of making up to, stopping, holding, and towing a drifting or disabled vessel;

(d) Demonstration of the capability to hold position within one hundred feet of another vessel; and

(e) Communications.

(8) Additional deployment requirement for all plan holders. Once every three years plan holders must deploy regional mobile wildlife rehabilitation equipment and personnel necessary to set up the wildlife rehabilitation system found in the plan. This is an additional deployment drill unless it is incorporated into a large multiobjective deployment drill.

(9) For all plan holders, ecology may initiate scheduled inspections and unannounced deployment and tabletop drills.

(a) In addition to the drills listed above, ecology will implement a systematic scheduled inspection and unannounced drill program to survey, assess, verify, inspect or deploy response equipment listed in the plan. This program will be conducted in a way so that no less than fifty percent of the resources will be confirmed during the first triennial cycle, and the remaining fifty percent during the subsequent triennial cycle.

(b) Unannounced drills may be (~~called~~) initiated by ecology when specific problems are noted with individual plan holders, or randomly, to strategically ensure that all operating environments, personnel and equipment readiness have been adequately tested.

(c) Unannounced notification drills are designed to test the ability to follow the notification and call-out process in the plan.

(d) Immediately prior to the start of an unannounced deployment or tabletop drill, plan holders will be notified in writing of the drill objectives, expectations and scenario.

(e) Plan holders may request to be excused if conducting the drill poses an unreasonable safety or environmental risk, or significant economic hardship. If the plan holder is excused, ecology will conduct an unannounced drill at a future time.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-720 Evaluation criteria. The ecology drill evaluation process is based on the National Preparedness for Response Exercise Program (NPREP) 2016 guidance document. The NPREP guidance document lists fifteen core components that shall be demonstrated by the plan holder during the triennial cycle. Ecology adopts the fifteen core components as the criteria used to evaluate plan holder tabletop and deployment drills. The core components are as follows:

(1) Notifications: Test the notifications procedures identified in the plan.

(2) Staff mobilization: Demonstrate the ability to assemble the spill response organization identified in the plan.

(3) Ability to operate within the response management system described in the plan((-): This includes demonstration of the ICS staffing and process identified in the plan.

(4) Source control: Demonstrate the ability of the spill response organization to control and stop the discharge at the source.

(5) Assessment: Demonstrate the ability of the spill response organization to provide an initial assessment of the discharge, or potential discharge and provide continuing assessments of the effectiveness of the tactical planning and operations.

(6) Containment: Demonstrate the ability of the spill response organization to contain the discharge at the source or in various locations for recovery operations.

(7) ~~((Recovery:))~~ Mitigation: Demonstrate the ability of the spill response organization to recover, mitigate, and remove the discharged product(~~(-Includes mitigation and removal activities, e.g., dispersant use, in situ burn use))~~ through the use of oil spill countermeasures including, but not limited to, mechanical oil recovery, dispersants, in situ burning, and bioremediation ((use)).

(8) Protection: Demonstrate the ability of the spill response organization to protect the environmentally, culturally, and economically sensitive areas identified in the NWACP and the plan.

(9) Disposal: Demonstrate the ability of the spill response organization to dispose of the recovered material and contaminated debris in compliance with guidance found in the NWACP.

(10) Communications: Demonstrate the ability to establish an effective communications system throughout the scope of the plan for the spill response organization.

(11) Transportation: Demonstrate the ability to provide effective multimode((-)) transportation (~~(both for execution~~

~~of the discharge and support functions)), for all areas of the response.~~

(12) Personnel support: Demonstrate the ability to provide the necessary logistical support of all personnel associated with the response.

(13) Equipment maintenance and support: Demonstrate the ability to maintain and support all equipment associated with the response.

(14) Procurement: Demonstrate the ability to establish an effective procurement system.

(15) Documentation: Demonstrate the ability of the plan holder's spill management organization to document all operational and support aspects of the response and provide detailed records of decisions and actions taken.

AMENDATORY SECTION (Amending WSR 13-01-054, filed 12/14/12, effective 1/14/13)

WAC 173-182-740 Drill requirement waivers. (1) Plan holders may request a waiver for a deployment or tabletop drill requirements.

(2) The request shall be in writing and shall describe why a waiver should be considered and how the plan holder is meeting the purpose and intent of the drill program with the waiver.

(3) Plan holder's requests for a drill waiver will be made available for public review and comment, including interested local and tribal governments and other stakeholders, for a period of thirty days.

(4) Ecology will evaluate the request and respond in writing within sixty calendar days of receipt of the ~~((letter))~~ waiver request.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-910 Noncompliance. (1) If an owner or operator of a covered vessel, onshore or offshore facility, a person or plan holder is unable to comply with an approved contingency plan or otherwise fails to comply with requirements of this chapter, ecology may, at its discretion:

(a) Place conditions on approval; and

(b) Require additional drills to demonstrate effectiveness of the plan; or

(c) Revoke the approval status.

(2) Approval of a plan by ecology does not constitute an express assurance regarding the adequacy of the plan nor constitute a defense to liability imposed under state law.

(3) Any violation of this chapter may be subject to the enforcement and penalty sanctions.

(4) Ecology may assess a civil penalty of up to one hundred thousand dollars against any person who is in violation of this ~~((section))~~ chapter. Each day that a covered vessel, facility or person is in violation of this ~~((section))~~ chapter shall be considered a separate violation.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-920 Operation without plan. (1) A covered vessel may not enter or operate on the waters of the

state without an approved, or conditionally approved, contingency plan, except that a covered vessel not in compliance with this chapter may enter waters of the state if the Coast Guard has determined that the vessel is in distress.

(2) The owner or operator of an onshore or offshore facility may not operate without an approved, or conditionally approved, plan nor transfer cargo or passengers to or from a covered vessel that does not have an approved, or conditionally approved, contingency plan. The owner or operator of a covered vessel may not transfer oil to or from an onshore or offshore facility that does not have an approved or conditionally approved contingency plan.

(3) Ecology may assess a civil penalty under RCW 43.21B.300 of up to one hundred thousand dollars against any person who is in violation of this (~~(section)~~) chapter. In the case of a continuing violation, each day's continuance shall be considered a separate violation.

(4) Any person found guilty of willfully violating any of the provisions of this (~~(section)~~) chapter, or any final written orders or directive of ecology or a court shall be deemed guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

AMENDATORY SECTION (Amending WSR 06-20-035, filed 9/25/06, effective 10/26/06)

WAC 173-182-930 Severability. If any provision of this chapter is held invalid, the remainder of the (~~(rule)~~) chapter is not affected.

WSR 16-21-059
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed October 14, 2016, 1:55 p.m., effective November 14, 2016]

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

Purpose: Birth evidence, updating the rules to reflect current administrative practice to only require a member to submit proof of age if the department of retirement systems has questions about the member's age.

Citation of Existing Rules Affected by this Order: Amending WAC 415-106-610 and 415-112-507.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-18-055 on August 31, 2016.

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

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

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

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

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

Date Adopted: October 11, 2016.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's web site or by submitting to the department:

(1) A completed, signed and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected.

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).

(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your (~~(certified)~~) birth certificate, passport(=) or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

AMENDATORY SECTION (Amending WSR 05-12-108, filed 5/27/05, effective 6/27/05)

WAC 415-112-507 How do I apply for retirement benefits? (~~(=)~~) You should apply for retirement benefits(=; you must submit the following) at least thirty days before your intended retirement date. You can apply online at the department's web site or by submitting to the department:

(1) A completed, signed, and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's notarized signature indicating consent to the retirement option you selected. See WAC 415-112-015(10).

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-112-504 (3)(d) for Plan 1 or WAC 415-112-505 (2)(c) for Plan 2 and 3 members, option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).

(ii) ~~((If you are married, but have had a prior dissolution decree on file with the department designating a survivor beneficiary under RCW 41.50.790, spousal consent is not required. The dissolution decree must have been filed at least thirty days prior to your retirement.))~~ Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(2) Evidence of your birth date, only if requested by the department, such as a ((certified copy)) photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department((=and)). If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

WSR 16-21-061

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 14, 2016, 2:50 p.m., effective November 14, 2016]

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

Purpose: Amending the appraisal management company rules is necessary to ensure the agency remains in compliance with chapter 18.310 RCW and section 1124 to Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA) as modified by section 1473 of the 2010 Dodd-Frank Act.

These changes update fingerprint process requirements, clarify fingerprint fees to be paid to the vendor, update existing time frame for renewing to accommodate for technology changes, and adopt a new rule valuation independence standard as required by the Truth in Lending Act (TILA) 15 U.S.C. Secs. 1601-1667.

Citation of Existing Rules Affected by this Order: Amending WAC 308-409-020, 308-409-030, and 308-409-050.

Statutory Authority for Adoption: RCW 18.310.020 (1) and (11).

Other Authority: 12 U.S.C. § 3353(d); 12 C.F.R. § 226-42.

Adopted under notice filed as WSR 16-16-059 on July 27, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: October 14, 2016.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

WAC 308-409-020 Application process to license as an appraisal management company. (1) An entity applying for licensure as an appraisal management company shall present to the department:

(a) A completed licensure application form that complies with RCW 18.310.060;

(b) Completed registration forms for the owner(s) of ten percent or more of the company and controlling persons, including a designated controlling person((-));

(c) Fingerprint ~~((cards, that are))~~ background checks that are identified to the appraisal management company program, for owner(s) of ten percent or more of the company and controlling person(s);

(i) An application submitted without the required fingerprint ~~((card(s)))~~ background check is considered incomplete.

(ii) ~~((When))~~ If a fingerprint ~~((card))~~ submission is rejected, the owner or controlling person must ~~((submit to the department a new fingerprint card))~~ follow the department's authorized vendor's procedures for resubmitting fingerprints within twenty-one calendar days ((of written notice to the address of record on file with the appraisal management company program)) of the date the department notifies the applicant.

(iii) Failure to ~~((submit a new fingerprint card may result in a suspension of the appraisal management company license until the fingerprint card is received by the department))~~ follow the vendor's fingerprint procedures within twenty-one days may result in a suspension of the appraisal management company license until the vendor's fingerprint procedures are followed. The applicant will be responsible

for any fingerprinting fees due to the department's authorized vendor.

(iv) If the fingerprint (~~(card)~~) submission is rejected, the applicant must pay a new fee for fingerprinting and background processing. After three failed submissions, the program may use other sources/methods to satisfy the background check requirement.

(d) Proof of surety bond; and

(e) Appropriate fees.

(2) A change in ownership or controlling person(s) of the appraisal management company will require the new owner(s) or controlling person(s) to submit owner or controlling person registration form(s) to the department together with fingerprint (~~(cards)~~) background check(s), that are identified to the appraisal management company program(~~(and appropriate processing fees)~~) within fourteen business days of change.

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

WAC 308-409-030 Licensure and renewal. (1) Appraisal management companies must be licensed by January 1, 2012.

(2) Each original and renewal license issued under chapter 18-310 RCW shall expire two years from date of issue.

(3) To be renewed as an appraisal management company, the holder of a valid license shall submit an application and pay the prescribed fee to the director no earlier than (~~(ninety)~~) one hundred twenty days prior to the expiration date.

(4) If a company fails to renew a license prior to its expiration and no more than one year has passed since the company last held a valid license, the company may obtain a renewed license by paying the renewal fee and late renewal penalty fee.

(5) The director shall cancel the license of any company whose renewal fee is not received within one year from the date of expiration. A company may obtain a new license by applying for original licensure as an appraisal management company.

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

WAC 308-409-050 Fees and charges. The following fees shall be paid under the provisions of chapter 18.310 RCW:

Title of Fee	Fee
Original licensure	\$2,400.00
Renewal	1,200.00
Late renewal penalty	38.00
Duplicate license	30.00
Fingerprint processing	((35.25)) per vendor schedule*

*Fees for the category marked with an asterisk are determined by contract with an outside vendor.

NEW SECTION

WAC 308-409-090 Valuation independence standards. (1) Appraisal management companies shall select an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; and

(2) Appraisal management companies shall conduct appraisal management services in accordance with the requirements of the Truth in Lending Act, 15 U.S.C. Secs. 1601-1667.

**WSR 16-21-062
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed October 14, 2016, 4:10 p.m., effective February 1, 2017]

Effective Date of Rule: February 1, 2017.

Purpose: WAC 246-853-990 Osteopathic fees and renewal cycle and 246-933-990 Veterinarian fees and renewal cycle, the adopted rules implement fee changes for osteopathic physicians, osteopathic physicians assistants, and veterinarians to implement HB 2432 (chapter 42, Laws of 2016) by increasing the impaired practitioner program license surcharge for these professions and providing some reduced credential fees to offset the surcharge increase.

Citation of Existing Rules Affected by this Order: Amending WAC 246-933-990 and 246-853-990.

Statutory Authority for Adoption: Chapter 42, Laws of 2016, RCW 18.130.175, and 43.10.250.

Adopted under notice filed as WSR 16-14-098 on July 5, 2016.

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

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

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

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

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

Date Adopted: October 14, 2016.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-07-004, filed 3/6/15, effective 4/6/15)

WAC 246-853-990 Osteopathic fees and renewal cycle. (1) Licenses must be renewed every year on the practi-

tioner's birthday as provided in chapter 246-12 WAC, Part 2, except postgraduate training limited licenses.

(2) Postgraduate training limited licenses must be renewed every year to correspond to program dates.

(3) The following nonrefundable fees will be charged for osteopathic physicians:

Title of Fee	Fee
Original application	
Endorsement application	\$(425.00) <u>375.00</u>
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((425.00)) <u>375.00</u>
Late renewal penalty	((250.00)) <u>190.00</u>
Expired license reissuance	250.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Inactive license renewal	
Renewal	((350.00)) <u>310.00</u>
Expired license reissuance	225.00
Late renewal penalty	((175.00)) <u>155.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Retired active license renewal	
Renewal	((219.00)) <u>195.00</u>
Late renewal penalty	((110.00)) <u>100.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Endorsement/state exam application	500.00
Reexam	100.00
((Certification)) Verification of license	50.00
Limited license	
Application	((325.00)) <u>285.00</u>
Renewal	((300.00)) <u>265.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>

Title of Fee	Fee
Temporary permit application	70.00
Duplicate certificate	20.00

(4) The following nonrefundable fees will be charged for osteopathic physician assistants:

Title of Fee	Fee
Original application	
Application	\$(250.00) <u>220.00</u>
UW online access fee (HEAL-WA)	16.00
Active license renewal	
Renewal	((250.00)) <u>220.00</u>
Late renewal penalty	((150.00)) <u>110.00</u>
Expired license reissuance	100.00
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
Retired active license renewal	
Renewal	((134.00)) <u>120.00</u>
Late renewal penalty	((75.00)) <u>60.00</u>
UW online access fee (HEAL-WA)	16.00
Substance abuse monitoring surcharge	((25.00)) <u>50.00</u>
((Certification)) Verification of license	30.00
Interim permit	200.00
License after exam	100.00
Duplicate certificate	20.00

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-933-990 Veterinarian 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
((State examination (initial/retake))	\$210.00
Initial state license	160.00
Specialty licensure	155.00
Impaired veterinarian assessment	40.00
Temporary permit	235.00
State or specialty license renewal	175.00
Retired active license and renewal	85.00

Title of Fee	Fee
Late renewal penalty (state and specialty license)	95.00
Expired license reissuance	90.00
Late renewal penalty (retired active license)	90.00
Duplicate license	30.00
Certification of license	30.00))
<u>Original application</u>	
State examination (initial/retake)	\$210.00
Initial state license	145.00
<u>Specialty license</u>	140.00
<u>Temporary permit</u>	215.00
<u>State or specialty license renewal</u>	
Renewal	160.00
Impaired veterinarian assessment	25.00
Late renewal penalty	80.00
Expired license reissuance	90.00
<u>Retired active license and renewal</u>	
Renewal	70.00
Impaired veterinarian assessment	25.00
Late renewal penalty	50.00
<u>Duplicate license</u>	30.00
<u>Verification of license</u>	30.00

Adopted under notice filed as WSR 16-16-104 on August 2, 2016.

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

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

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

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

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

Date Adopted: October 18, 2016.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits? When the department approves a rehabilitation plan, the department will notify the worker ((will be notified)) in writing of their right to decline further vocational rehabilitation services and elect option 2 benefits ((within fifteen calendar days)). The worker must make an election within the time frame required in WAC 296-19A-600. When the worker elects option 2 benefits, the self-insurer must take the following action within five working days of receiving the worker's request:

- (1) Terminate time-loss benefits with proper notification to the worker as required in WAC 296-15-420(9);
- (2) Establish the total amount of the option 2 award and a payment schedule for the option 2 benefits that begins the date time-loss is terminated;
- (3) Submit a Self-Insurance Vocational Reporting Form to the department. The Self-Insurance Vocational Reporting Form must include:
 - (a) The total vocational services costs paid since the date the worker was found eligible for services;
 - (b) The option 2 election form signed by the worker; and
 - (c) Documentation that includes the total amount of the option 2 award and payment schedule.
- (4) Commence payment of option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than fifteen days after the date time-loss is terminated. Option 2 benefits may be paid before the department issues an order.

WSR 16-21-074

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed October 18, 2016, 9:37 a.m., effective November 18, 2016]

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

Purpose: Workers' compensation self-insurance rules and regulations, WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits?

The existing language in WAC 296-15-4316 states that workers who are eligible for vocational retraining have fifteen calendar days from the date the rehabilitation plan is approved to decline further services and elect option 2 benefits instead. This language conflicts with the time frame established by RCW 51.32.096, an amendment enacted through chapter 137, Laws of 2015 (SHB 1496). The language change will align this rule with the new requirements of the law.

Citation of Existing Rules Affected by this Order: Amending WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits?

Statutory Authority for Adoption: RCW 51.04.020.

WSR 16-21-090**PERMANENT RULES****DEPARTMENT OF LICENSING**

[Filed October 18, 2016, 3:41 p.m., effective November 18, 2016]

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

Purpose: Recent legislation, 2ESHB 2778, requires the department of licensing (DOL) to determine clean alternative fuel vehicles' base model manufacturer's suggested retail price (MSRP) by rule. The MSRP as determined by DOL will be used in evaluating whether a clean alternative fuel vehicle meets the retail sales and use tax exemption criteria set by statute.

Statutory Authority for Adoption: RCW 82.08.809 and 82.12.809.

Adopted under notice filed as WSR 16-18-075 on September 6, 2016.

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

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

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

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

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

Date Adopted: October 18, 2016.

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-04-030 Retail sales and use tax exemption criteria for clean alternative fuel vehicles. For the purposes of RCW 82.08.809 and 82.12.809:

(1) The lowest manufacturer's retail price for a base model vehicle is the one provided by a vendor selected by the department;

(2) The department publishes and periodically updates a list of all vehicle models qualifying for the sales and use tax exemptions under those sections; and

(3) The list of qualifying vehicle models is available on the department's web site.

As used in this section, "base model" means the least expensive and least optioned model of a qualifying vehicle identified in RCW 82.08.809 (1)(a) and 82.12.809 (1)(a).

WSR 16-21-092**PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed October 19, 2016, 7:35 a.m., effective November 19, 2016]

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

Purpose: New rules [in] chapter 47.04 RCW direct the department's innovative partnerships office to adopt rules and develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

2ESSB 5987, section 403, adds a new section to chapter 47.04 RCW directing Washington state department of transportation to adopt rules for a new electric vehicle charging infrastructure pilot program.

Statutory Authority for Adoption: Chapter 47.04 RCW.

Adopted under notice filed as WSR 16-17-134 on August 23, 2016.

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

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

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

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

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

Date Adopted: October 10, 2016.

Kara Larsen
Director of Risk Management
and Legal Services

Chapter 468-602 WAC**ELECTRIC VEHICLE CHARGING
INFRASTRUCTURE PILOT PROGRAM****NEW SECTION**

WAC 468-602-010 Authority and purpose. RCW 47.04.350 directs the Washington state department of transportation public-private partnership office to develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

The pilot program will consist solely of projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions or otherwise increase energy independence for the state.

Funds will be available for the deployment of electric vehicle fast-charging stations at key locations along state and federal highway corridors to support interurban, interstate, and interregional travel.

NEW SECTION

WAC 468-602-020 Definitions. Bidder: Nonprofit organizations and government agencies including, but not limited to, federal, state and local public agencies such as cities, counties, municipal corporations, special purpose districts, tribes, ports, air quality districts, public utility districts, transit systems, and regional organizations serving areas adjacent to highway corridors.

Corridor: A state or federal highway and interconnected streets connecting communities or destinations and serving major sources of vehicular travel within the state of Washington.

Department: Washington state department of transportation.

Electric vehicle charging station: Products or assemblies installed for the purpose of safely delivering and managing the transfer of electrical energy from an electrical source to an electric vehicle.

Eligible project or project: The installation of one or more electric vehicle charging stations along a corridor within the state of Washington.

Indirect value: Benefits of the project that may accrue to project participants other than for the use of the charging equipment.

Industry standard charging equipment: Nonproprietary electric vehicle supply equipment (EVSE) that meets the common standards used for most mass-produced makes and models of plug-in electric vehicles sold in North America including, but not limited to, CHAdeMO, SAE CCS, and SAE J1772.

Owner-operator: An entity involved in installing and operating charging equipment including, but not limited to, dedicated charging service companies, charging equipment manufacturers, property owners acting as site hosts, automakers, electric utilities, electricity generators, and state and local governments.

Private sector partner: An entity contributing to the project who stands to gain indirect value from development of the project including, but not limited to, a motor vehicle manufacturer, retail store, nonprofit organization, or tourism stakeholder.

Profitable and sustainable: Yielding profit or financial gain after the initial project investment and the financial ability to maintain the equipment over time. Projects that strongly demonstrate their financial sustainability within a five-year performance period may be prioritized.

Project: Deployment of publicly accessible electric vehicle fast-charging stations at one or more accessible locations along a corridor.

NEW SECTION

WAC 468-602-030 Priority corridors. The department shall define the corridors within which bidders may propose to install electric vehicle charging infrastructure. Priority corridors include Interstate 5, U.S. Highway 2, Interstate 90, U.S. Highway 101, Interstate 82, U.S. Highway 395, and roadways connecting midsize communities and major tourist destinations.

The department believes having publicly accessible electric vehicle fast chargers in forty-mile interval along corridors will provide the basic network necessary to enable vehicle travel between communities. The department further recognizes that an effective corridor requires redundancy and fault tolerance, especially in high-use areas. Bidders are encouraged to submit proposals that clearly support the department's goal of a minimum forty-mile interval target and/or that add capacity/redundancy in congested, high-volume areas for a more robust, dependable charging network. Bidders must explain how their project will lead to the eventual build out of the corridor, and/or planned future charging infrastructure along the corridor.

A bidder may submit a proposal for a project in a corridor that is not listed above as a priority corridor. The department will consider such proposals under the following guidelines:

- Must meet the requirements listed in WAC 468-602-040.
- Must provide supporting evidence that charging stations will be located where the charging services are in demand by electric vehicle customers.

NEW SECTION

WAC 468-602-040 Project requirements. Projects shall provide safe, convenient, cost-competitive, reliable, and easy access for drivers to recharge mass-produced plug in electric vehicles with industry standard charging equipment. Projects shall expand the network of infrastructure geographically along underserved roadways and/or strengthen the existing network by providing equipment that is compatible with more makes and models of vehicles and by providing additional locations for fault tolerance and redundancy. The department shall ensure projects meet the following requirements:

(1) Bidders must have private sector partners contributing to the project who stand to gain indirect value from development of the project including, but not limited to, motor vehicle manufacturers, retail stores, or tourism stakeholders;

(2) Bidders must demonstrate that the proposed project will be valuable to electric vehicle drivers and will address a gap in the state's electric vehicle charging station infrastructure;

(3) Projects must be expected to be profitable and sustainable over time for the owner-operator and/or the private sector partner, inclusive of indirect value gained;

(4) Bidders must specify how the project captures the indirect value of charging station deployment to the private sector partner;

(5) Bidders and their private sector partners must agree to operate and maintain the stations for at least five years and must meet the requirements in the department's solicitation materials for networked equipment offerings, station operations and uptime, public access, payment options, customer service, signage, and period of performance; and

(6) Bidders and their private sector partners have the ability to reinvest any proceeds from ongoing operations to expand the power and amount of chargers at a given site to accommodate higher utilization rates in the future.

NEW SECTION

WAC 468-602-050 Selection process. The selection process shall comply with all applicable state laws and policies that govern the department. Solicitations will include, but are not limited to, the following steps:

- Appointment of a procurement coordinator;
- A schedule of procurement activities;
- Bidder question and answer period;
- Public notification of apparently successful bidder;
- An optional bidder debrief; and
- Complaint and protest procedures.

In evaluating proposals, the department may use the electric vehicle financial analysis tool developed during the joint transportation committee's study of financing models for electric vehicle charging station infrastructure if the tool is made available to all potential bidders.

The department may award only one grant or loan per project from the electric vehicle charging infrastructure account.

WSR 16-21-093**PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed October 19, 2016, 7:37 a.m., effective November 19, 2016]

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

Purpose: The proposal amending WAC 468-38-270 was initiated by a federal proposal in Fixing America's Surface Transportation Act (FAST Act). The proposal increases the stinger steered automobile transporter overall length from seventy-five feet to eighty feet. The proposal also increases the front overhang allowance from three to four feet and the rear overhang from four feet to six feet.

The proposal gives authority for all automobile transporters to haul general freight on a backhaul.

Reasons supporting proposal: To comply with federal requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 468-38-270(2).

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Adopted under notice filed as WSR 16-17-135 on August 23, 2016.

Changes Other than Editing from Proposed to Adopted Version: Allowance of seventy-five feet overall length dimension increased to eight [eighty] feet. Front overhang allowance of three feet was increased to four feet and a rear overhang allowance of four feet was increased to six feet.

Added language "The conventional stinger steered automobile transporter is authorized to haul general freight on a backhaul. Backhaul for this section means a return trip back over all or part of the same route."

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

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

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

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

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

Date Adopted: October 10, 2016.

Kara Larson [Larsen]
Director of Risk Management
and Legal Services

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

WAC 468-38-270 Specialized equipment. (1) **Why are certain vehicles designated as specialized equipment?** Certain vehicles are designed and built for very unique functions other than transporting persons. The federal highway administration classifies and references some of these vehicles as specialized equipment in Title 23 C.F.R. Part 658.13 (e) and sets minimum and/or maximum parameters for the vehicle to operate. The department adopted these specialized classifications and accepted or further defined the legal parameters for operation on state highways. In addition to federal rule, the department has also recognized certain specially designed vehicles that, by necessity, exceed one or more of the vehicle size and weight parameters in chapter 46.44 RCW. The department has also classified these over-legal vehicles as specialized equipment in order to (~~authorize~~ ~~[authorize]~~) authorize their movement on state highways, using a special motor vehicle permit, and provide a consistent administrative and enforcement treatment. All vehicles exceeding legal requirements are subject to the requirements of this section and the requirements of chapter 46.44 RCW.

(2) **What vehicle types are classified by Title 23 Code of Federal Regulations (C.F.R.) 658.13(e) as specialized equipment, including size limits, and authorized to operate on the state highways without a special permit?** Listed in alphabetical order:

Automobile transporter: To be considered an automobile transporter, the power unit and the trailing unit must be modified to carry assembled automobiles. If the combination consists of a truck and stinger-steered trailing unit, the overall dimension for length must not exceed (~~(seventy-five))~~ eighty feet, plus a front overhang of (~~(three))~~ four feet and rear overhang of (~~(four))~~ six feet. If the combination consists of a tractor and semi-trailer (traditional high mount), overall dimension for length will not exceed sixty-five feet, plus three-foot front overhang and four-foot rear overhang.

• The conventional and stinger steered automobile transporter is authorized to haul general freight on a backhaul. Backhaul for this section means a return trip back over all or part of the same route.

Boat transporter: See automobile transporter.

Driveaway saddlemount vehicles: A combination consisting of a maximum of four trucks or truck tractors used in driveaway service where three of the vehicles are towed by the fourth in triple saddlemount position. The overall dimension for the length of the saddlemount combination will not exceed ninety-seven feet. Such combinations may include all axes of one vehicle loaded upon another, known as a full-mount.

Munitions carriers with dromedary equipment: A truck tractor equipped with a dromedary unit operating in combination with a semi-trailer transporting Class 1 explosives and/or any munitions related security material, as specified by the U.S. Department of Defense in compliance with 49 C.F.R. 177.835, overall dimension for length not to exceed seventy-five feet.

(3) **What other vehicle types does the department recognize as specialized equipment for the purpose of over-size and overweight permitting?** The following specialized equipment, including size and weight parameters, can operate with special permit. Listed in alphabetical order:

Concrete pumper trucks: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit, but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Pumper hose extensions and a volume of water to flush the system, when the pumping process is complete.

Construction equipment: Equipment used primarily for off-road heavy construction activity may be permitted for use on designated highway segments identified in RCW 46.16.010 (5)(h)(i)(B) and (C) and must comply with the weight limits in RCW 46.44.091. Equipment may operate without permit on highway segments designated as part of the construction zone.

Cranes: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Cranes may be permitted with standard working components that are included within the rated capacity of the crane. A boom trailer or boom dolly will be permitted only when the boom is attached to the crane upper works, for the purpose of transferring load to meet weight requirements. A crane may be permitted with counterweights, outrigger assemblies, load block, hook and cable tension ball assembly also loaded on the boom trailer or boom dolly, as long as those components are included in the rated capacity of the crane and do not cause the vehicle to exceed permitted weight limits.

Well drilling trucks: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating

with proper inflation, as determined by the nomenclature imprinted on the tire. The vehicle may carry drill extensions as part of the fixed load.

(4) **Can specialized equipment tow a licensed vehicle used for commute purposes?** A specialized self-propelled single unit vehicle registered as a fixed load, operating under a fixed load permit, and/or cranes operating under an over-size/overweight permit (exclusive of boom dollies or trailers), may be permitted to tow a vehicle with a gross vehicle weight rating not to exceed eight thousand pounds. The overall length of the combination must not exceed seventy-five feet. The towed vehicle must be used for the sole purpose of commuting to and from the job site where the specialized equipment is in service.

(5) **Does a specialized vehicle operating under an overweight or fixed load permit receive any exemption from weight postings or weight restrictions placed on highway infrastructure?** No. Specialized mobile equipment must not cross load-restricted infrastructure when the equipment, either as a result of gross weight, axle weight or tire loadings, exceeds the stated capacity of the posting or restriction. However, exemptions to specific requirements, in WAC 468-38-075, may apply to specific fixed loads as identified in WAC 468-38-075.

WSR 16-21-099

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed October 19, 2016, 9:00 a.m., effective November 19, 2016]

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

Purpose: Determination of practicable goals for use of biofuels, electricity, natural gas and propane by local government subdivisions of the state that own and operate vessels, vehicles and construction equipment.

Statutory Authority for Adoption: RCW 43.325.080.

Adopted under notice filed as WSR 16-12-085 on May 31, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 194-29-070 Compliance evaluation.

- Removed procurement requirement for natural gas and propane vehicles, regardless of lifecycle cost, when using at least twenty percent renewable natural gas or renewable propane.
- Added encouragement to lease gasoline vehicles in order to take advantage of new alternative fuel and vehicle technologies in a timely manner.
- Clarified expectations regarding procurement and use of various biofuels and biofuel blends.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 17, 2016.

Brian Bonlender
Director

PRACTICABLE USE OF ELECTRICITY AND BIOFUELS TO FUEL LOCAL GOVERNMENT VEHICLES, VESSELS AND CONSTRUCTION EQUIPMENT

Chapter 194-29 WAC

NEW SECTION

WAC 194-29-010 Authority and purpose. These rules are adopted pursuant to the authority granted in RCW 43.325.080, which requires the department to adopt rules to define practicability and clarify how local governments will be evaluated in determining whether they have met the goals set forth in RCW 43.19.648(2). These goals require all local governments, to the extent practicable, to satisfy one hundred percent of their fuel usage for operating publicly owned vehicles, vessels and construction equipment from electricity or biofuel, effective June 1, 2018.

NEW SECTION

WAC 194-29-020 Definitions. The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Biofuel" means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel, including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(2) "Department" means the department of commerce.

(3) "Electric vehicle" means a vehicle with motive energy supplied solely by an electric motor.

(4) "Hybrid electric vehicle" means a vehicle with motive energy supplied by both an internal combustion engine and an electric motor powered primarily by externally supplied sources of energy. Vehicles that utilize externally supplied energy for electric power take-off functionality are also considered hybrid electric vehicles.

(5) "Lifecycle cost" means the total cost of ownership over the life of an asset, including, but not limited to, purchase or lease cost, financing costs, taxes, incentives, operation, maintenance, depreciation, resale or surplus value, engine conversion, and the incremental cost of associated refueling infrastructure.

(6) "Local government" means any unit of local government including, but not limited to, counties, cities, towns, municipal corporations, quasi-municipal corporations, special purpose districts, and school districts.

(7) "Practicable" or "practicability" means the extent to which alternative fuels and vehicle technologies can be used to displace gasoline and diesel fuel in vehicles, as determined by multiple dynamic factors including cost and availability of fuels and vehicles, changes in fueling infrastructure, operations, maintenance, technical feasibility, implementation costs, and other factors.

(8) "Procure" means to purchase or lease.

(9) "Renewable diesel" means diesel fuel derived from organic matter that has been purified to meet requirements for use as a transportation fuel.

(10) "Renewable natural gas" means a methane-rich biogas derived from landfills, wastewater treatment facilities, anaerobic digesters, and other sources of organic decomposition that has been purified to meet requirements for use as a transportation fuel.

(11) "Renewable propane" means propane derived from organic matter that has been purified to meet requirements for use as a transportation fuel.

(12) "Revenue fleet" means all vehicles used to provide transportation services where a local government is directly or indirectly compensated for the services provided to passengers.

(13) "Vehicle" means a motorized vehicle, vessel or construction equipment. It does not mean an aircraft, railed vehicle, or stationary electrical generating equipment.

NEW SECTION

WAC 194-29-030 Applicability. All local governments are required to transition all vehicles to electricity or biofuels to the extent practicable. The provisions of this chapter apply statewide. Pursuant to RCW 43.19.648(2):

(1) Revenue fleets with a majority of active vehicles, not including transit vans, using compressed natural gas on June 1, 2018 are exempt from these rules. Transit vans and non-revenue fleet vehicles remain subject to these rules.

(2) These rules do not require engine retrofits that would void warranties, or replacement of vehicles before the end of their useful lives.

(3) If a local government believes it is not practicable to use electricity or biofuels to fuel police, fire or other emergency response vehicles, including utility vehicles frequently used for emergency response, it is encouraged to consider alternate fuels and vehicle technologies, such as natural gas or propane, to displace gasoline and diesel fuel use. Local governments that opt to exempt emergency response vehicles from these rules must notify the department as part of their annual reporting under WAC 194-29-080.

NEW SECTION

WAC 194-29-040 Assessment data and reporting. For purposes of assessing compliance with these rules, each local government using 200,000 or more gallons of gasoline and/or diesel to fuel vehicles on an annual basis is required to report as described in WAC 194-29-080. The department will collect data from a variety of sources to ensure local governments meeting this threshold are fulfilling the reporting requirement. To determine which transit agencies meet the reporting threshold, the department will use the most recent

data from the National Transit Database, as published by the Washington State Department of Transportation.

Any local government with fuel use that initially meets the reporting threshold but subsequently drops below the threshold is encouraged to continue filing reports.

Given the findings of the underlying legislation and associated policies guiding public sector use of alternative fuels and vehicles, the department intends to continue to monitor local government compliance beyond June 1, 2018.

NEW SECTION

WAC 194-29-050 Compliance threshold. Pursuant to RCW 43.19.648(2), all local governments must comply with these rules.

NEW SECTION

WAC 194-29-060 Technical coordination. The department, in cooperation with external stakeholders with appropriate knowledge and expertise, will convene meetings at least quarterly of the agencies listed in WAC 194-28-050 and the local governments required to report under this rule to discuss trends in alternative fuel and vehicle development, including current and near-term market availability, performance metrics, innovative procurement opportunities, and fleet management tools. The meetings will take place in person, by phone, via the Internet, or any combination thereof, through the year 2020, and thereafter as may be warranted.

NEW SECTION

WAC 194-29-070 Compliance evaluation. RCW 43.325.080 requires the department to specify how local government efforts to meet the goals set forth in RCW 43.19.648 (2) will be evaluated. While local governments are responsible for determining the most effective means of displacing their gasoline and diesel consumption through vehicle electrification and biofuel use, procurement decisions should be guided primarily through a comparison of alternatives on a lifecycle cost basis. The department will provide an analytical tool to assist local governments in their assessment of lifecycle costs. Local governments may use alternate means of determining lifecycle costs so long as all the variables included in the department's analytical tool are taken into consideration.

Local governments must consider the following criteria in determining whether they have, to the extent practicable, satisfied one hundred percent of fuel usage for operating vehicles, vessels and construction equipment from electricity or biofuel, effective June 1, 2018:

(1) Vehicles.

(a) It is considered practicable to procure an electric or hybrid electric vehicle when the following criteria are met: a vehicle is available that meets operational needs, charging requirements can be met during routine use or through fleet management strategies, and the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(b) If the criteria in (a) cannot be met, it is considered practicable to procure or convert a vehicle to be fueled in

whole or in part by natural gas or propane when the lifecycle cost is equal to or less than the lifecycle cost of the vehicle the local government would otherwise procure.

(c) When making procurement decisions involving vehicles with diesel engines, it is considered practicable for local governments to select vehicles with engine warranties that provide for the highest level of biodiesel use.

(d) When making procurement decisions involving vehicles with gasoline engines, local governments are encouraged to lease vehicles in order to take advantage of new alternative fuel and vehicle technologies in a timely manner.

(2) Biofuels.

(a) Biodiesel and Renewable Diesel. Unless otherwise limited by law, it is considered practicable for local governments to:

(i) Use five percent biodiesel-blended fuel (B5) in all applications when the fuel is available at retail or for delivery to on-site storage tanks at a price no more than one percent higher than #2 ultra-low sulfur diesel.

(ii) Use biodiesel-blended fuels containing more than five percent biodiesel in all applications unless otherwise restricted by warranty or air quality regulation when the fuel is available for delivery to on-site storage tanks at a price no more than one percent higher than #2 ultra-low sulfur diesel, including the cost of any additives necessary to ensure reliable storage and performance.

(iii) Use renewable diesel, or the highest available blend of renewable diesel and #2 ultra-low sulfur diesel, when the fuel is available at retail or for delivery to on-site storage tanks at a price no more than one percent higher than #2 ultra-low sulfur diesel.

(b) Ethanol. It is considered practicable for local governments with vehicles capable of using high-level blends of ethanol and gasoline (flex-fuel) to make good faith efforts to identify sources and use flex-fuel when the fuel is available at retail or for delivery to on-site storage tanks at a price that is at least twenty percent less than regular gasoline.

(c) Renewable Natural Gas. It is considered practicable for local governments with natural gas-fueled vehicles to use renewable natural gas, or the highest available blend of renewable and conventional natural gas, when the fuel is available at retail or for delivery to on-site storage tanks at a price equal to or less than conventional natural gas.

(d) Renewable Propane. It is considered practicable for local governments with propane-fueled vehicles to use renewable propane, or the highest available blend of renewable and conventional propane, when the fuel is available at retail or for delivery to on-site storage tanks at a price equal to or less than conventional propane.

(3) Local governments are encouraged to install electric vehicle charging infrastructure in all fleet parking and maintenance facilities, and to incorporate charging into all new facility construction and substantial remodeling projects.

NEW SECTION

WAC 194-29-080 Demonstration of progress. By July 1 of each year, each local government required to report under WAC 194-29-040 must submit to the department an annual report on a form provided by the department docu-

menting how it is complying with the goal of satisfying one hundred percent of fuel usage for operating vehicles, vessels and construction equipment from electricity or biofuel by June 1, 2018, based on the criteria in WAC 194-29-070, including any reasons for noncompliance and plans for future compliance.

WSR 16-21-102

PERMANENT RULES

DEPARTMENT OF CORRECTIONS

[Filed October 19, 2016, 9:41 a.m., effective November 19, 2016]

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

Purpose: Repeal of chapter 137-10 WAC.

Citation of Existing Rules Affected by this Order:

Repealing chapter 137-10 WAC.

Statutory Authority for Adoption: RCW 34.05.353 (2)(d).

Adopted under notice filed as WSR 16-16-009 on July 21, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 5.

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

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

Date Adopted: October 12, 2016.

Richard Morgan
Secretary

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 137-10-005 Purpose.

WAC 137-10-010 Definitions.

WAC 137-10-015 Qualifications and filing.

WAC 137-10-020 Form of petition.

WAC 137-10-025 Consideration and disposition.