

**WSR 22-04-043**  
**PERMANENT RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**

[Filed January 26, 2022, 10:16 a.m., effective February 26, 2022]

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

Purpose: Legal references were updated and grammatical changes were made. Specifically, the RCW references throughout the regulations were changed from chapter 70.94 RCW to chapter 70A.15 RCW. Several references to WAC were deleted or updated. The term "Control Officer" was replaced with "Executive Director" throughout the regulations. The term "shall" is mostly replaced throughout the regulations. Grammar was updated throughout the regulations. Typographical errors were corrected throughout the regulations. Definitions were deleted that were not used in the regulations. A few of the definitions were modified to reference existing definitions in RCW and/or WAC.

Citation of Rules Affected by this Order: New ORCAA Regulations Rules 1.12 and 6.4; repealing ORCAA Regulations Rule 4.5; and amending ORCAA Regulations - Regulation 1 General Provisions - Rules 1.1-1.2, 1.4-1.11; Regulation 2 Enforcement Procedures and Penalties; Regulation 3 Fees; Regulation 4 Registration; Regulation 5 Operating Permit Program; Regulation 6 Permits Required - Rules 6.1-6.1.12, 6.2, 6.2.2-6.2.3, 6.2.5-6.2.8, 6.3-6.3.11; Regulation 7 Prohibitions; Regulation 8 Performance Standards - Rules 8.1.1-8.1.5, 8.1.7-8.1.8, 8.2-8.7, 8.9-8.11, 8.12.1-8, 8.12.2, 8.12.4-8.12.6, 8.13-8.15, and 8.17.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 21-21-112 on October 20, 2021.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to Rule 8.4. The terms cremation and crematory were deleted in the final version. Several typographical errors were corrected.

Date Adopted: January 12, 2022.

Francea L. McNair  
Executive Director

**AMENDATORY SECTION**  
**REGULATIONS**

of the

**OLYMPIC REGION CLEAN AIR AGENCY**

Clallam, Grays Harbor, Jefferson, Mason, Pacific  
and Thurston Counties

**ADOPTED BY THE BOARD OF DIRECTORS**

**ON DECEMBER 3, 1969**

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**NOTICE**

The regulations, rules, and emission standards of the Olympic Region Clean Air Agency (ORCAA), and as described on the following pages are the basic law for the geographical area covered and are the priority regulations for the same subject matter covered by other laws concerning air pollution control.

## Other Reference in Law Concerning

## AIR POLLUTION IN THE STATE OF WASHINGTON

(1) Chapter 70A.~~((94))~~15 Revised Code of Washington, the State Clean Air Act: and related administrative codes of the State of Washington Department of Ecology, (~~Chapter 18 and~~) Title 173 WAC.

(2) United States Public Law (~~(95-95))~~101-549, Clean Air amendments of 19~~((77))~~90: and related regulations and standards of the U.S. Environmental Protection Agency as found in the Federal Register.

**AMENDATORY SECTION****RULE 1.1 POLICY**

The Olympic Region Clean Air Agency (Agency), consisting of the counties of Clallam, Grays Harbor, Jefferson, Mason, Pacific and Thurston, having formed pursuant to chapter 70A.~~((94))~~15 RCW, as amended, adopts the following Regulations to control the emission of air contaminants from sources within the jurisdiction of the Agency: to provide for the uniform administration and enforcement of these Regulations: and to administer the requirements and purposes of chapter 70A.~~((94))~~15 RCW, as amended, and the Federal Clean Air Act.

It is hereby declared to be the public policy of the Olympic Region Clean Air Agency to secure and maintain such levels of air quality as will protect human health and safety; and, to the greatest degree practicable, prevent injury to plant and animal life and to property; and be consistent with the social, economic, and industrial well-being of the territory of the Agency.

**AMENDATORY SECTION****RULE 1.2 NAME OF AGENCY**

The name of the multi-county air pollution control authority comprised of the activated or inactivated air pollution control authorities of Clallam County, Grays Harbor County, Jefferson County, Mason County, Pacific County, and Thurston County (~~shall~~) will be known and cited as the "Olympic Region Clean Air Agency."

**AMENDATORY SECTION****RULE 1.4 DEFINITIONS**

When used in regulations of the Olympic Region Clean Air Agency, the following definitions (~~shall~~) will apply, unless defined otherwise in individual Regulations:

**"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 rule.

**(a)** In general, actual emissions as of a particular date (~~shall~~) must 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~~) must allow the use of a different time period upon determination that it is more representative of normal source rates, and types of materials processed, stored, or combusted during the selected time operation. Actual emissions (~~shall~~) must be calculated using the emissions unit's actual operating hours, production period.

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

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

"Agency" shall mean the same as "Authority."

"**Agriculture or Agricultural ((Operation))**" means the growing of crops, the raising of fowl or animals as gainful occupation.

"**Air Contaminant**" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

"**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, property, or which unreasonably interferes with enjoyment of life and property. For (~~the purpose of~~) these Regulations, air pollution (~~shall~~) does not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(~~"Air Pollution Episode" means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.~~)

"**Allowable Emissions**" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the 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 as set forth in 40 CFR part 60, 61, or 63;

(b) Any applicable state implementation plan emissions limitation including those with a future compliance date; or (~~+~~) ;

(c) The emissions rate specified as a federally enforceable permit condition, including those with future compliance date.

"**Alteration**" means the act of altering, which means to change or make different and includes any addition to or enlargement or replacement; or change of the design, capacity, process or arrangement; or any increase in the connected loading of equipment or control facility; or any change in fuels, method of operation or hours of operation not previously approved by the Agency through a Notice of Construction Approval, which would increase or adversely affect the kind or amount of air contaminant emitted by a stationary source.

"**Ambient Air**" means the surrounding outside air.

"**Ambient Air Quality Standard**" means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which (~~shall~~) must not be exceeded.

(~~"Ancillary" for the purpose of defining "stationary source" or "source," means "related."~~)

(~~"Approval Order" is defined in "order of approval."~~)

"**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.

"**Authority**" means the Olympic Region Clean Air Agency. "Agency" shall mean the same as "Authority."

(~~"Authorized Permitting Agent" means either the county, county fire marshal, fire districts, or county conservation district, provided an agreement has been signed with the local air pollution control agency or Department of Ecology.~~)

**"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 which mark the initiation of the change.

**"Best Available Control Technology (BACT)"** means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70A.((94))15 RCW emitted from or which results from any new or modified stationary source which the permitting 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, clean fuels, or treatment or innovative fuel combustion techniques for control of such air pollutant. In no event ((shall)) must application of the best available control technology result in emissions of any pollutants which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60, Part 61, and Part 62. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph ((shall)) must not be allowed to increase above levels that would have been required under definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

**"Board"** means the Board of Directors of the Olympic Region Clean Air Agency.

**"Bubble"** means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70A.((94))15. ((155))2240 and Rule 6.1.12 of Regulation 6.

**"Commenced"** as applied to "Construction" means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

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

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

For ((the purpose of)) this definition, "necessary pre-construction 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 SIP.

**"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.

**"Control Apparatus"** means any device that prevents or controls the emission of any air contaminant.

((~~"Control Officer" means the Air Pollution Control Officer of the Olympic Region Clean Air Agency. "Executive Director" means the same as "Control Officer."~~))

**"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demoli-

tion, or modification of an emissions unit) which would result in a change in actual emissions.

**"Criteria Pollutant"** means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

**"Daylight Hours"** means the hours between official sunrise and official sunset.

**"Ecology"** means the Washington State Department of Ecology.

**"Emission"** means a release of air contaminants into the ambient air.

**"Emission Point"** means the location (place in horizontal plane and vertical elevation) at which an emission enters the atmosphere.

**"Emission reduction credit (ERC)"** means a credit granted pursuant to chapter 173-400 WAC. This is a voluntary reduction in emissions.

**"Emission Standard"** and **"Emission Limitation"** means requirements established under the Federal Clean Air Act or chapter 70A.((94))15 RCW which limits the quantity, rate, or concentration of emissions of air contaminants 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, chapter 70A.((94))15 RCW.

**"Emission Unit"** means any part of a stationary source or source which emits or would have a potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70A.((94))15 or 70A.((98))388 RCW.

**"EPA"** means the United States Environmental Protection Agency (USEPA).

**"Equipment"** means any stationary or portable device, or any part thereof, capable of causing the emission of any air contaminant into the atmosphere.

**"Establishment"** means the act of establishing, which means creating, setting up, or putting into practice any equipment, material, fuel, or operational change.

**"Excess Emission"** means emissions of an air pollutant (~~in excess of an~~) more than the applicable emission standard.

**"Executive Director"** means the Air Pollution Control Officer of the Olympic Region Clean Air Agency.

**"Facility"** means all emission units in the same industrial grouping located on contiguous or adjacent properties and under common ownership and control.

**"Federal Clean Air Act (FCAA)"** means the Federal Clean Air Act, as 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.

**"Federally Enforceable"** means all limitations and conditions (~~which are~~) enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to Rule 6.1.12 or WAC 173-400-091.

**"Fuel Burning Equipment"** means any equipment, device or contrivance used for the burning of any fuel, and all appurtenances thereto, including ducts, breechings, control equipment, fuel feeding equipment, ash removal equipment, combustion controls, stacks, chimneys, etc., used for indirect heating in which the material being heated is not contacted by and adds no substances to the products of combustion.

**"Fugitive Dust"** means a particulate emission made airborne by forces of wind, man's 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.

**"Fugitive Emission"** means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**"Garbage"** means refuse, animal, or vegetable matter as from a kitchen, restaurant, or store.

**"Good Engineering Practice (GEP)"** refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

**"Hogged-fuel"** means wood slabs, edging, trimmings, etc., which have been put through a "hog" to reduce them to a uniform small size, and ((also)) includes shavings from planing mills, sawdust from sawkerfs, bits of bark, chips, and other small-recovered products from the manufacture of wood products or any combination thereof.

**"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

**"In Operation"** means engaged in activity related to the primary design function of the source.

**"Installation"** means the act of installing, which means placing, assembling, or constructing equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

**"Light Detection and Ranging (LIDAR)"** means the EPA alternate method 1 determination of the opacity of emissions from stationary sources remotely by LIDAR.

**"Lowest Achievable Emission Rate (LAER)"** means the same as it is defined in WAC 173-400-810. ((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 that 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.))

**"Major Modification"** as it applies to stationary sources subject to requirements for new sources in nonattainment areas means the same as it is defined in WAC 173-400-810. ((is defined depending on the attainment status of the area in which the project is located, or planned to be located, as follows:

~~(a) Nonattainment Areas. "Major Modification" as it applies in nonattainment areas means any physical change or change in 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.~~

~~(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

~~(2) A physical change or change in 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 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;~~

~~(iii) Use of an alternative fuel by reason of an order or rule under 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: 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 the stationary source is approved to use under any major new source review permit or approval order issued under Rule 6.1.4(b) or WAC 173-400-112;~~

~~(vi) 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.~~

~~(vii) Any change in ownership at a stationary source.~~

~~(viii) 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, 2001) 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:~~

~~(A) 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~~

~~(B) 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.~~

~~(ix) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:~~

~~(A) The SIP; and~~

~~(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.~~

~~(b) Attainment or unclassified areas. "Major Modification" as it applies in attainment or unclassified areas means 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.~~

~~(1) Any net emissions increase that is considered significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.~~

~~(2) A physical change or change in the method of operation shall not include:~~

~~(i) Routine maintenance, repair and replacement;~~

~~(ii) Use of 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;~~

~~(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 stationary source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition or approval order which was established after January 6, 1975, pursuant to 40 CFR 52.21 or a SIP approved new source review regulation; or~~

~~(B) The stationary source is approved to use under any PSD permit;~~

~~(vi) 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.~~

~~(vii) Any change in ownership at a stationary source.~~

~~(viii) The addition, replacement, or use of 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:~~

~~(A) 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, 2001) 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~~

~~(B) 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.~~

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

**"Major Stationary Source"** (a) as it applies to stationary sources subject to requirements for new sources in **nonattainment areas** means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in **attainment or unclassified areas** means the same as it is defined in WAC 173-400-710. ((is defined depending on the attainment status of the area in which the stationary source is located, or planned to be located as follows:

~~(a) Nonattainment areas. "Major Stationary Source" as it applies in nonattainment areas means:~~

~~(1) 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:~~

~~(i) 70 tons per year of PM<sub>10</sub> in any "serious" nonattainment area for PM<sub>10</sub>.~~

~~(ii) 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.~~

~~(2) Any physical change that would occur at a stationary source not qualifying under (b) (1) of this rule as a major stationary source, if the change would constitute a major stationary source by itself.~~

~~(3) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.~~

~~(4) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this paragraph 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 a major stationary source due to (b) (1) (i) or (b) (1) (ii) of this rule:~~

- ~~(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;~~
- ~~(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 250 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 of 113 of the Federal Clean Air Act.~~

~~(5) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, FACILITY, or installation" means all 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 person 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, as amended.~~

~~(b) Attainment or unclassified areas. "Major Stationary Source" as it applies in attainment or unclassified areas means:~~

~~(1) 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:~~

- ~~(i) Fossil fuel fired steam electric plants of more than 250 million British thermal units per hour heat input;~~
- ~~(ii) Coal cleaning plants (with thermal dryers);~~
- ~~(iii) Kraft pulp mills;~~
- ~~(iv) Portland cement plants;~~
- ~~(v) Primary zinc smelters;~~
- ~~(vi) Iron and steel mill plants;~~
- ~~(vii) Primary aluminum ore reduction plants;~~
- ~~(viii) Primary copper smelters;~~
- ~~(ix) Municipal incinerators capable of charging more than 50 tons of refuse per day;~~
- ~~(x) Hydrofluoric, sulfuric, and 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 (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;~~
- ~~(xxiii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;~~
- ~~(xxiv) Taconite ore processing plants;~~
- ~~(xxv) Glass fiber processing plants; and~~
- ~~(xxvi) Charcoal production plants.~~

~~(2) Regardless of the stationary source size specified in (b) (1) of this rule, 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~~

~~(3) Any physical change that would occur at a stationary source not otherwise qualifying under (b) (1) or (b) (2) of this rule, as a major stationary source if the change would constitute a major stationary source by itself.~~

~~(4) A major stationary source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.~~

~~(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule 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;~~
- ~~(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 250 million British thermal units per hour heat input;~~
- ~~(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.~~

~~(6) For purposes of determining whether a stationary source is a major stationary source, the term "building, structure, facility, or installation" means all 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.)~~

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

**"Material Handling"** means the handling, transporting, loading, unloading, storage, and transfer of material with no significant chemical or physical alteration.

**"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 result in the emissions of any air contaminant not previously emitted. The term modification (~~shall~~) will be construed consistent with

the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

**"National Ambient Air Quality Standards (NAAQS)"** means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

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

**"National Emission Standards for Hazardous Air Pollutants for Source Categories"** means the federal rules in 40 CFR Part 63.

**"Net Emissions Increase"** (a) as it applies to stationary sources subject to requirements for new sources in nonattainment areas means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in attainment or unclassified areas means the same as it is defined in WAC 173-400-710. (( is defined depending on the attainment status of the area in which the new stationary source or modification is located, or planned to be located, as follows:

~~(a) Nonattainment areas. "Net Emissions Increase" as it applies in nonattainment areas means:~~

~~(1) The amount by which the sum of the following exceeds zero:~~

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

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

~~(2) 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.~~

~~(3) An increase or decrease in actual emissions is creditable only if:~~

~~(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC.~~

~~(ii) The permitting agency has not relied on it in issuing any permit or order of approval for the stationary source under this rule 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.~~

~~(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(5) A decrease in actual emissions is creditable only to the extent that:~~

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

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

~~(iii) It has approximately the same qualitative significance to the increase from the particular change; and~~

~~(iv) The permitting agency has not relied on it in issuing any permit or order of approval under this rule 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.

~~(6) 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 shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.~~

~~(b) Attainment or unclassified areas. "Net Emissions Increase" as it applies in attainment or unclassified areas means:~~

~~(1) The amount by which the sum of the following exceeds zero:~~

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

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

~~(2) 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.~~

~~(3) An increase or decrease in actual emissions is creditable only if ecology 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.~~

~~(4) 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  $PM_{10}$  emissions can be used to evaluate the net emissions increase for  $PM_{10}$ .~~

~~(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.~~

~~(6) A decrease in actual emissions is creditable only to the extent that:~~

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

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

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

~~(7) An increase that results from a physical change at a stationary source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.)~~

**"New Source"** means:

**(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; and

(b) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

**"New Source Performance Standards (NSPS)"** means the federal rules set forth in 40 CFR Part 60.

**"Nonattainment Area"** means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a national ambient air quality standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

**"Nonroad Engine"** means:

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

(1) 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

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

(3) 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. Indicia 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:

(1) 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

(2) The engine is regulated by a New Source Performance Standard promulgated under section 111 or 112 of the Federal Clean Air Act; or

(3) The engine otherwise included in (a)(3) of this rule 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 a single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating 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 operates at a single location approximately three months (or more) each year. The paragraph does not apply to an engine after the engine is removed from the location.

**"Notice of Construction Application"** means a written application to permit construction, installation or establishment of a new stationary source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

(~~"Nuisance" means an emission that unreasonably interferes with the use and enjoyment of property.~~)

**"Olympic Air Pollution Control Authority (OAPCA)"** is the former name of Olympic Region Clean Air Agency (ORCAA). Reference to "OAPCA" (~~shall~~) means the same as ORCAA.

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

**"Order"** means any order issued by ecology or a local air agency pursuant to chapter 70A. ~~((94))~~ 15 RCW, including, but not limited to

RCW 70A.((94))15.((332))3011, 70A.((94))15.((211))2520, 70A.((94))15.((152))2210, 70A.((94))15.((153))2220, and 70A.((94))15.((141))2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

**"Order of Approval" or "Approval Order"** means a regulatory order issued by Ecology or ~~(f)~~ the Agency to approve the Notice of Construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

**"Owner"** means person, agent, lessor, lessee, possessor, manager, supervisor, operator, or other responsible party of real property or other assets which includes equipment or control apparatus.

**"Ozone Depleting Substance"** means any substance listed in Appendices A and B to Subpart A of 40 CFR part 82.

**"Particulate Matter" or "Particulates"** means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**"Parts Per Million (ppm)"** means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

**"Permit"** means a written warrant or license granted by the Board, ~~(Control Officer)~~ Executive Director, or duly authorized Representative or Agent.

**"Permitting Agency"** means ecology or the local air pollution control agency with jurisdiction over the source.

**"Person"** means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

"PM<sub>2.5</sub>" 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.

"PM<sub>10</sub>" 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.

"PM<sub>2.5</sub> 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 Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

"PM<sub>10</sub> 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 SIP.

**"Potential to Emit"** means the maximum 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)~~ will 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 source.

**"Prevention of Significant Deterioration (PSD)"** means the program in WAC 173-400-~~(141)~~700 to 173-400-750. Ecology is responsible for the PSD program for stationary sources in ORCAA's jurisdiction. (~~Contact Ecology at (360) 407-6800 for more information.~~)

**"Process"** means any equipment, device apparatus, chemical, natural element, procedure, effort, or any combination thereof which performs a service, function, use, or method, leading to an end of a ~~(particular)~~ performance, or manufacturing production.

**"Reasonably Available Control Technology (RACT)"** means the lowest emission limit that a particular stationary source or stationary 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 stationary source category (~~taking into account~~) considering 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 stationary source category (~~shall~~) will be adopted only after notice and opportunity for comment are afforded.

**"Refuse"** means waste as defined in Rule 1.4 of this Regulation.

**"Regulation"** means any regulation, or any subsequently adopted additions or amendments thereto, of the Olympic Region Clean Air Agency.

**"Regulatory Order"** means an order issued by Ecology or an ~~(A)~~ agency to an air contaminant source that applies to that source, any applicable provision of chapter 70A. ~~(94)~~15 RCW, or the rules adopted there under, or, for sources regulated by a local air agency, the regulations of that agency.

**"Representative"** or **"Agent"** means any person authorized by the ~~(Control Officer)~~ Executive Director of the Agency to represent ~~(him)~~ them in an official and specific manner.

**"Residential"** means a two or single-family unit.

**"Secondary Emissions"** means emissions which would occur because ~~(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 stationary source or modification that causes the secondary emissions. Secondary emissions may include, but are not limited to:

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

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions because ~~(as a result)~~ of the construction or operation of the major stationary source or major modification.

**"Significant"** (a) as it applies to stationary sources subject to requirements for new sources in nonattainment areas means the same as it is defined in WAC 173-400-810; or, (b) as it applies to stationary sources subject to requirements for new sources in attainment or unclassified areas means the same as it is defined in WAC 173-400-710. ~~(is defined depending on the attainment status of the area:~~

~~(a) Nonattainment areas. "Significant" as it applies in nonattainment areas means, in reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

| Pollutant and Emissions Rate |                         |
|------------------------------|-------------------------|
| 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) Attainment or unclassified areas. "Significant" as it applies in attainment or unclassified areas means:~~

~~(1) In reference to a net emissions increase or the stationary source's potential to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:~~

| Pollutant and Emissions Rate  |   |
|---|---|
| Carbon monoxide   | 100 tons per year (tpy)                                       |
| Nitrogen oxides   | 40 tpy  |
| Sulfur dioxide  | 40 tpy  |
| Particulate matter (PM)   | 25 tpy of PM emissions<br>15 tpy of PM-10 emissions           |
| Volatile organic compounds  | 40 tpy  |
| Fluorides   | 3 tpy   |
| Lead  | 0.6 tpy   |
| Sulfuric acid mist  | 7 tpy   |
| Hydrogen sulfide (H <sub>2</sub> S)   | 10 tpy  |
| Total reduced sulfur (including H <sub>2</sub> S)   | 10 tpy  |
| Reduced sulfur compounds (including H <sub>2</sub> 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)                                |

| Pollutant and Emissions Rate  |                                |
|---|--------------------------------|
| Municipal solid waste landfill emissions (measured as nonmethane organic compounds) | 45 megagrams per year (50 tpy) |
| Ozone-depleting substances (in effect on July 1, 2000)                              | 100 tpy                        |

~~(2)~~ In reference to a new emissions increase or the stationary source's potential to emit a pollutant subject to regulation under the Federal Clean Air Act that the definition in (b) (1) of this rule does not list, any emissions rate. However, for purposes of the applicability of this rule, 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.

~~(3)~~ Regardless of the definition in (b) (1) of this rule, 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 (twenty four hour average).)

"**Source**" means all ((of)) the emissions unit((s)) including quantifiable fugitive emissions, that are located on one or more contiguous or 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)) will 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.

"**Source Category**" means all sources of the same type of classification.

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

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

"**Standard Conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

"**Standard Cubic Foot of Gas**" means that amount of the gas, which would occupy a cube having dimensions of one foot on each side((7)) if the gas were free of water vapor and at standard conditions.

~~(( "State Act" means the Washington Clean Air Act, chapter 70.94 RCW, as amended.))~~

"**State Implementation Plan (SIP)**" or the "Washington SIP" in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal 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.

"**Stationary Source**" means any building, structure, facility, or installation, which 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 nonroad engine or

nonroad vehicle as defined in section 216(11) of the Federal Clean Air Act.

**"Synthetic Minor"** means any stationary source that's potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

**"Temporary"** means a period (~~of time~~) not to exceed one (1) year.

**"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 or an approved equivalent method and expressed as hydrogen sulfide.

**"Total Suspended Particulate (TSP)"** means particulate matter as measured by the method described in 40\_CFR Part 50 Appendix B.

**"Toxic Air Pollutant (TAP)"** (~~or "Toxic Air Contaminant"~~) means any (~~Class A or Class B~~) toxic air pollutant listed in WAC 173-460-150 (~~and WAC 173-460-160~~). 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 (~~and/or WAC 173-460-160~~). The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes or compounds.

**"True Vapor Pressure"** means the equilibrium partial pressure exerted by the stored organic compound at:

(a) The annual average temperature of the organic compound as stored; or

(b) At the local annual average temperature as reported by the National Weather Service if stored at ambient temperature.

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

**"United States Environmental Protection Agency (USEPA)"** (~~shall~~) will be referred to as EPA.

**"Vent"** means any opening through which gaseous emissions are exhausted into the ambient air.

**"Volatile Organic Compound (VOC)"** means the same as it is defined in WAC 173-400-030. (~~any carbon compound that participates in atmospheric photochemical reactions.~~

~~(a) Exceptions. The following compounds are not a VOC:~~

~~Acetone;~~

~~carbon monoxide;~~

~~carbon dioxide;~~

~~carbonic acid;~~

~~metallic carbides or carbonates;~~

~~ammonium carbonate;~~

~~dimethyl carbonate;~~

~~propylene carbonate;~~

~~methane;~~

~~ethane;~~

~~methylene chloride (dichloromethane);~~

~~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 (HCFC-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);~~  
~~parachlorobenzotribluoride (PCBTF);~~  
~~cyclic, branched, or linear completely methylated siloxanes;~~  
~~perchloroethylene (tetrachloroethylene);~~  
~~3,3-dichloro 1,1,1,2,2-pentafluoropropane (HCFC-225ea);~~  
~~1,3-dichloro 1,1,2,2,3-pentafluoropropane (HCFC-225eb);~~  
~~1,1,1,2,3,4,4,5,5,5-decafluoropentane (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-254ca);~~  
~~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 (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);~~  
~~2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane~~  
~~((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);~~  
~~1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);~~  
~~2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>~~  
~~(CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);~~  
~~methyl acetate and perfluorocarbon compounds which fall into~~  
~~these classes:~~  
~~(i) Cyclic, branched, or linear completely fluorinated alkanes;~~  
~~(ii) Cyclic, branched, or linear completely fluorinated ethers~~  
~~with no saturations;~~  
~~(iii) Cyclic, branched, or linear completely fluorinated tertiary~~  
~~amines with no saturations; and~~  
~~(iv) Sulfur containing perfluorocarbons with no saturations and~~  
~~with sulfur bonds only to carbon and fluorine.~~  
~~(b) For the purpose of determining compliance with emission lim-~~  
~~its, VOC 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 quanti-~~  
~~fied, and the exclusion is approved by ecology, the Agency, or EPA.~~  
~~As a precondition to excluding these negligibly reactive com-~~  
~~pounds as VOC or at any time thereafter, ecology or the Agency may re-~~  
~~quire an owner or operator to provide monitoring or testing methods~~

and results demonstrating, to the satisfaction of the Agency, the amount of negligibly reactive compounds in the source's emissions.))

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

## AMENDATORY SECTION

### RULE 1.5 ((CONTROL OFFICER)) EXECUTIVE DIRECTOR — POWERS AND DUTIES

(a) The ((Control Officer)) Executive Director shall observe and enforce the provisions of state law and all orders, ordinances, resolutions or rules and regulations of the Agency pertaining to control and prevention of air pollution in accordance with the policies of the Board of Directors.

(b) At least thirty days prior to the commencement of any formal enforcement action under RCW 70A.((94))15.((430))3150 or 70A.((94))15.((431))3160, whenever the ((Control Officer)) Executive Director has reason to believe that any provision of state law or any regulation relating to the control or prevention of air pollution has been violated, the ((Control Officer)) Executive Director may cause written notice to be served upon the alleged violator or violators. The notice ((shall)) must specify the provision of state law or the regulation alleged to be violated and the facts alleged to constitute a violation there of and may include an order that necessary corrective action be taken within a specified time. In lieu of an order, the ((Control Officer)) Executive Director may require that the alleged violator or violators appear before the Board for a hearing, at a time and place specified in the notice, given at least twenty (20) days prior to such hearing, and answer the charges.

(c) The ((Control Officer)) Executive Director and/or a qualified designated agent may make any investigation or study which is necessary for ((the purpose of)) enforcing these Regulations or any amendment thereto of controlling or reducing the amount or kind of air contaminant.

(d) The ((Control Officer)) Executive Director and/or a qualified designated agent may obtain from any person, subject to the jurisdiction of the Agency, such information or analysis as will disclose the nature, extent, quantity, or degree of air contaminants which are, or may be, discharged by such source and type or nature of control equipment in use.

(e) ((For the purposes of)) To ((investigating)) investigate conditions specific to the control, recovery, or release of air contaminants into the atmosphere, the ((Control Officer)) Executive Director or a duly authorized representative ((shall have)) has the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person ((shall)) may refuse entry or access to the ((Control Officer)) Executive Director, or a duly authorized representative, who request entry for ((the purpose of)) an inspection, and who presents appropriate credentials; nor ((shall any person)) obstruct, hamper, or interfere with any such inspection ((by the Control Officer, or a duly authorized representative)).

(f) If during the course of an inspection, the ((Control Officer)) Executive Director or a duly authorized representative desires to obtain a sample of air contaminant, fuel, or process material or other material which affects or may affect the emission of air contaminants, the ((Control Officer)) Executive Director or a designated agent shall notify the owner or operator of the time and place of ob-

taining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and the ~~((Control Officer))~~ Executive Director or a duly authorized representative shall give a receipt to the owner or operator for the sample obtained.

(g) The ~~((Control Officer))~~ Executive Director may engage, at the Agency's expense and with Board approval, qualified individuals, or firms to make independent studies and reports as to the nature, extent, quantity, or degree of any air contaminants which are or may be discharged from any source.

(h) The ~~((Control Officer))~~ Executive Director is empowered to sign official complaints or issue citations or initiate court suits or use other means to enforce the provisions of the Regulations.

(i) ~~((In order to))~~ To demonstrate compliance with emission standards, the ~~((Control Officer))~~ Executive Director ~~((shall have))~~ has the authority to require a source to be tested, either by the Agency personnel or by the owner, using source test procedures approved by the Agency. The owner ~~((shall))~~ must be given reasonable advance notice of the requirement of the test.

(j) ~~((In order to))~~ For Agency personnel to perform a source test, the ~~((Control Officer))~~ Executive Director ~~((shall have))~~ has the authority to require the owner of the source to provide an appropriate platform and sampling ports. The owner ~~((shall))~~ must have the opportunity to observe the sampling and, if there is adequate space to conduct the tests safely and efficiently, to obtain sample at the same time.

## AMENDATORY SECTION

### RULE 1.6 CONFIDENTIAL INFORMATION

Whenever any record or other information, other than ambient air quality data or emissions data, furnished to or obtained by the Agency, pursuant to any sections in chapter 70A. ~~((94))~~ 15 RCW, relate to processes or production unique to the owner or operator or are likely to affect adversely the competitive position of such owner or operator if released to the public or to the competitor, and the owner or operator of such processes or production so certifies, such records or information ~~((shall be))~~ will only be for the confidential use of the Agency.

Nothing herein ~~((shall))~~ will be construed to prevent the use of records or information by the Agency in compiling or publishing analysis or summaries relating to the general condition of the outdoor atmosphere: Provided, that such analysis or summaries do not reveal any information otherwise confidential under the provisions of this rule: Provided further, that emission data furnished to or obtained by the Agency ~~((shall))~~ will be correlated with applicable emission limitations and other control measures and ~~((shall))~~ will be available for public inspection during normal business hours at offices of the Agency.

## AMENDATORY SECTION

### RULE 1.7 APPOINTMENT OF HEARING OFFICER

(a) In all instances where the Board is permitted or required to hold hearings under the provisions of chapter 70A. ~~((94))~~ 15 RCW, such hearings ~~((shall))~~ must be held before the Board; or the Board may appoint a hearing officer, who ~~((shall))~~ will be the Executive Director of the Agency or his/her designee to hold such hearings.

(b) A duly appointed hearing officer ~~((shall have))~~ has all the powers, rights and duties of the Board relating to the hearings.

**AMENDATORY SECTION****RULE 1.8 APPEALS FROM BOARD ORDERS**

(a) Any order issued by the Agency (~~shall~~) becomes final unless such order is appealed to the Hearings Board as provided in chapter 43.21B RCW. The sole basis for appeal of a fee assessed by the (~~Control Officer~~) Executive Director or Board (~~shall~~) will be that the assessment contains an arithmetic or clerical error.

(b) Any order issued by the Agency may be appealed to the Pollution Control Hearings Board if the appeal is filed with the Hearings Board and served on the Agency within thirty (30) days after receipt of the order in accordance with chapter 371-08 WAC. This is the exclusive means of appeal of such an order.

(c) The Agency in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(d) At any time during the pendency of such an appeal of such an order to the Pollution Control Hearings Board, the appellant or other affected parties may apply to the Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC for a stay of the order or the removal thereof.

**AMENDATORY SECTION****RULE 1.9 SEVERABILITY**

If any phrase, clause, or rule of these Regulations (~~shall be~~) is declared unconstitutional or invalid by any court of competent jurisdiction, it (~~shall~~) will be conclusively presumed that the Board of Directors would have enacted these Regulations without the phrase, clause, or rule so held unconstitutional or invalid; and the remainder of the Regulations (~~shall~~) will not be affected (~~as a result~~) because of said part being held unconstitutional or invalid.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION****RULE 1.10 SERVICE OF NOTICE**

(a) Service of any written notice required by ORCAA Regulations (~~shall~~) must be made on the owner(s) as follows:

(1) Either by mailing the notice in a prepaid envelope directed to the owner at the address listed on their application, order, registration certificate, or at the address where the equipment is located, by United States Certified Mail, return receipt requested; or

(2) By leaving the notice with the owner or if the owner is not an individual, with a member of the partnership or (~~either~~) group concerned, or with an officer, registered agent or managing agent of the corporation.

(b) Service of any written notice required by ORCAA Regulations (~~shall~~) must be made on the Agency, as follows:

(1) Either by mailing the notice in a prepaid envelope directly to the Agency at its office by United States Certified Mail, return receipt requested; or

(2) By leaving the notice at the Agency office with an employee of the Agency.

**AMENDATORY SECTION****RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date (~~shall be~~) is July 1, 2021.

## NEW SECTION

### RULE 1.12 STATE REGULATIONS REFERENCE DATE

Whenever state regulations are referenced in ORCAA's rules, the effective date is July 1, 2021.

## AMENDATORY SECTION

### RULE 2.1 VOLUNTARY COMPLIANCE

Nothing in this Regulation (~~shall~~) prevents the Agency from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

## AMENDATORY SECTION

### RULE 2.3 VARIANCES

Any person who owns or is in control of any plant, building, structure, establishment, process, or equipment may apply to the Agency or the Board for a variance to exceed a specific maximum emission standard of these Regulations for a limited period (~~of time~~), except for any federally enforceable standard, provided that a variance to state standard is also approved by the Department of Ecology. The application (~~shall~~) must be accompanied by such information and data as the (~~Control Officer~~) Agency or Board (~~may~~) requires. The Board may grant such variance but only after approval by the Department of Ecology and public hearing or due notice and in accordance with the provisions set forth in RCW 70A.~~(94)~~15.~~(181)~~2310, as now or hereafter amended. Any hearing held pursuant to this rule (~~shall~~) must be conducted in accordance with the rules of evidence as set forth in RCW 34.04.100, as now or hereafter amended. A variance (~~shall~~) will be charged fees (~~according to~~) per the Agency's Notice of Construction Fee Schedule.

## AMENDATORY SECTION

### RULE 2.4 NOTICES OF VIOLATIONS

At least 30 days prior to the commencement of any formal enforcement action under RCW 70A.~~(94)~~15.~~(430)~~3150 or 70A.~~(94)~~15.~~(431)~~3160, the Board or (~~Control Officer~~) Executive Director (~~shall cause~~) will serve written notice (~~to be served~~) upon the alleged violator or violators. The notice (~~shall~~) must specify the provisions of chapter 70A.~~(94)~~15 RCW or the orders, rules, or regulations adopted pursuant thereto, alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Board or the (~~Control Officer~~) Executive Director may require (~~that~~) the alleged violator or violators appear before the Board for a hearing. Every notice of violation (~~shall~~) will offer (~~to~~) the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(a) Each act of commission or omission which procures, aids, or abets in the violation (~~shall be considered~~) is a violation and (~~be~~) is subject to the same penalty.

(b) In case of a continuing violation, whether (~~or not~~) knowingly committed, each day's continuance (~~shall be~~) is a separate and distinct violation.

**AMENDATORY SECTION****RULE 2.5 REGULATORY ACTIONS AND PENALTIES**

The ~~((Control Officer))~~ Executive Director may take any of the following regulatory actions to enforce the provisions of chapter 70A. ~~((94))15~~ RCW or any of the rules or regulations in force pursuant thereto, which are incorporated by reference.

**(a) Civil Penalties**

**(1)** Any person who violates any of the provisions of chapter 70A. ~~((94))15~~ RCW or any of the rules or regulations in force pursuant thereto may incur a civil penalty in an amount not to exceed \$14,915.00 per day for each violation.

**(2)** Any person who fails to ~~((take))~~ act ~~((ion))~~ as specified by an Order issued pursuant to chapter 70A. ~~((94))15~~ RCW or Regulations of ~~((the Olympic Region Clean Air Agency ()))~~ ORCAA ~~((shall be))~~ is liable for a civil penalty of not more than \$14,915.00 for each day of continued noncompliance.

**(3)** Within 30 days after receipt of Notice of Civil Penalty, the person incurring the penalty may apply in writing to the ~~((Control Officer))~~ Executive Director for the remission or mitigation of the penalty. Any such request must contain the following:

**(i)** The name, mailing address, and telephone number of the appealing party;

**(ii)** A copy of the Notice of Civil Penalty appealed from;

**(iii)** A short and plain statement showing the grounds upon which the appealing party considers such Order to be unjust or unlawful;

**(iv)** A clear and concise statement of facts upon which the appealing party relies to sustain ~~((his or her))~~ their grounds for appeal;

**(v)** The relief sought, including the specific nature and extent; and

**(vi)** A statement that the appealing party has read the notice of appeal and believes the contents to be true followed by the party's signature.

Upon receipt of the application, the ~~((Control Officer shall))~~ Executive Director may remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

**(4)** Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC if the appeal is filed with the Hearings Board and served on the Agency within 30 days after receipt by the person penalized of the notice imposing the penalty or 30 days after receipt of the notice of disposition of the application for relief from penalty.

**(5)** A civil penalty ~~((shall))~~ becomes due and payable on the later of:

**(i)** 30 days after receipt of the notice imposing the penalty;

**(ii)** 30 days after receipt of the notice of disposition on application for the relief from penalty, if such application is made; or

**(iii)** 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

**(6)** If the amount of the civil penalty is not paid to the Agency within the time allowed ~~((30 days after it becomes due and payable))~~, the Agency may use any available methods, including Superior Court, to recover the penalty. In all actions brought in the Superior Court for

recovery of penalties hereunder, the procedure and rules of evidence ~~((shall be))~~ are the same as in ordinary civil action.

(7) To secure the penalty incurred under this rule, this Agency ~~((shall have))~~ may secure a lien on any vessel used or operated in violation of these Regulations, which ~~((shall))~~ will be enforced as provided in RCW 60.36.050.

**(b) Criminal Penalties**

(1) Any person who knowingly violates any of the provisions of chapter 70A.~~((94))~~15 RCW or any rules or regulations in force pursuant thereto, ~~((shall be))~~ is guilty of a crime and upon conviction thereof, ~~((shall))~~ may be punished by fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm ~~((shall be))~~ is guilty of a crime and ~~((shall))~~ may, upon conviction, be punished by a fine of not more than \$10,000.00, or by imprisonment for not more than 1 year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that they have thereby placed another person in imminent danger of death or substantial bodily harm ~~((shall be))~~ is guilty of a crime and ~~((shall))~~ may, upon conviction, be punished by a fine of not less than \$50,000.00, or by imprisonment for not more than 5 year, or both.

**(c) Additional Enforcement**

(1) Notwithstanding the existence or use of any other remedy, 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 chapter 70A.~~((94))~~15 RCW, or any order, rule or regulation issued by the Board of ~~((Control Officer))~~ Executive Director or a duly authorized agent, the Board, 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.

(2) As an additional means of enforcement, the Board or ~~((Control Officer))~~ Executive Director may accept an assurance of discontinuance of any act or practice deemed in violation of chapter 70A.~~((94))~~15 RCW or of any order, rule, or regulation adopted pursuant thereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance ~~((shall))~~ must specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance ~~((shall))~~ constitutes prima facie proof of a violation of this chapter or the orders, rules or regulations issued pursuant thereto, which make the alleged act or practice unlawful for ~~((the purpose of))~~ securing any injunction or other relief from Superior Court in the county wherein the violation is alleged to be occurring or to have occurred.

**AMENDATORY SECTION**

**RULE 2.6 COMPLIANCE SCHEDULES**

(a) Issuance. Whenever a source is found to be in violation of an emission standard or other provision of ORCAA's Regulations or chapter 70A.~~((94))~~15 RCW or title 173 WAC or any applicable federal regulation the Agency may issue a regulatory order requiring that the source be brought into compliance within a specified time. The order ~~((shall))~~ must contain a schedule for installation, with intermediate benchmark dates and a ~~((final))~~ completion date, which ~~((shall))~~ constitutes a compliance schedule.

(b) The source, including any person who owns or is in control of any plant, building, structure, establishment, process, or equipment, which is in violation of an emission standard or other provision of ORCAA's Regulations or chapter 70A.~~((94))~~15 RCW or title 173 WAC may submit a proposed Compliance Schedule to the Board for approval. The proposed Compliance Schedule must meet the requirements of this rule ~~((r))~~ and ~~((shall))~~ must be accompanied by such information and data as the ~~((Control Officer))~~ Executive Director or the Board may require.

(c) Public Noticing. ~~((r))~~ Compliance Schedules must meet the requirements for public involvement in accordance with chapter 70A.~~((94))~~15 RCW as now or hereafter amended. Any hearing held pursuant to this rule ~~((shall))~~ must be conducted in accordance with the Rules of Evidence as set forth in Chapter ~~((RCW))~~ 34.04~~((r100))~~ RCW, as now or hereafter amended.

(d) Federal Action. A source ~~((shall))~~ will be considered ~~((to be))~~ in compliance with this rule if all the provisions of its individual compliance schedule, including those stated by regulatory order, are being met. Such compliance does not preclude federal enforcement action by the EPA until and unless the schedule is submitted and adopted as an amendment to the State Implementation Plan.

(e) Penalties for delayed compliance. Sources on a compliance schedule but not meeting emissions standards may be subject to penalties as provided in the Federal Clean Air Act. In addition, failure at any phase to make progress towards compliance pursuant to any Compliance Schedule accepted by the Board ~~((shall))~~ may be deemed an unreasonable delay and in violation of the terms of said Compliance Schedule and the Board or ~~((Control Officer))~~ Executive Director may require that the responsible person appear before the Board to explain the delay and show cause why abatement action should not be started, enforcement action taken, and/or the Compliance Schedule revoked.

(f) Fee for Compliance Schedule. The Agency ~~((shall))~~ will not commence processing a compliance schedule request until it has received a filing fee as determined by Rule 3.3.

## AMENDATORY SECTION

### REGULATION 3 - FEES

The Board ~~((shall))~~ will establish Fee Schedules by Resolution. The Fee Schedules ~~((shall))~~ will be reviewed periodically to determine if the fee revenue collected is sufficient to recover program costs. Any proposed fee revision ~~((shall))~~ must include opportunity for public review and comment. Accordingly, the Agency ~~((shall))~~ must account for program costs, including direct and indirect employee costs and overhead. If it is determined that the total program fee revenue is either significantly excessive or deficient for this purpose, the Board may choose to amend the fee schedules to recover program costs more accurately ~~((recover program costs))~~.

## AMENDATORY SECTION

## RULE 3.1 ANNUAL REGISTRATION FEES

(a) The Agency (~~shall~~) will charge Initial and Annual registration fees pursuant to RCW 70A.~~(94)~~15.~~(151)~~2200. Annual registration fees (~~shall~~) will be assessed (~~according to~~) per the annual fee schedules set forth in Rule 3.1(b) below. Initial registration fees (~~shall~~) will be assessed upon initial registration of a source and (~~shall~~) will equal the annual registration fee based on projected emissions and prorated for the remaining months in the fiscal year. Initial and Annual registration fees (~~shall~~) provide revenue to fund the Agency's ongoing Registration Program.

(b) All sources requiring registration (~~shall~~) will be assessed an annual registration fee; the fees required by this rule (~~shall~~) will be based on process rates, equipment specifications, and emissions data from the previous calendar year on file with the Agency, (~~provided that,~~) if this information is not on file with the Agency, the Agency may base the annual fee on the enforceable emissions limitations for the source and maximum capacities and production rates. (~~For the purpose of~~) In assessing annual registration fees, the Agency (~~shall~~) will consider updates and revisions to any source's file received prior to July 1 of the current year. The fees (~~shall~~) will be assessed (~~according to~~) per items (1) and (2) of this rule. Sources assessed annual operating permit fees under Rule 3.2 (~~shall~~) will not be assessed annual fees under this rule.

(1) An Emissions Fee as specified in the Registration Fee Schedule per ton of each air contaminant listed in Table 3.1 that is emitted by the source. The emissions fee (~~shall~~) will be based on actual emissions from the source, for the last calendar year when available, or as specified in the file or permit. Only non-VOC TAPs will be subject to the emission fee; and

(2) A Registration Classification Fee as specified in the Registration Fee Schedule.

(c) The Agency (~~shall~~) sends annual registration invoices out on or after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing July 1 and ending June 30. The agency (~~shall~~) assesses annual registration fees based on the most recent information on file with the Agency including any updates to the source's file received prior to July 1 of that year.

(d) Upon assessment by the Agency, annual registration fees are due and payable and (~~shall~~) will be deemed delinquent if not fully paid (~~within thirty (30) days~~) on or before the due date on the invoice. However, sources classified as RC1, RC2, or RC3 (~~shall be given~~) have the option to pay their annual fee in quarterly installments. RC1, RC2, and RC3 sources (~~may choose~~) choosing to pay (~~their annual fees in~~) quarterly installments may (~~by~~) indicate(~~ing~~) so on the first invoice received and remit(~~ting~~) payment of the first installment to the Agency along with the duplicate copy of the invoice. Quarterly installments (~~shall be~~) are equal to 25% of the total annual registration fee and (~~shall be~~) are due (~~within 30 days of each quarter following initial assessment by the Agency~~) on or before the due date on the invoice.

(e) Any source which fails to pay, in full, their annual registration fee or annual registration installment by the due date, as stated on the invoice, (~~shall~~) may be assessed a late penalty in the amount of 25% of their annual registration fee. This late penalty (~~shall be~~) is in addition to the annual registration fee.

(f) Annual registration fees may be appealed (~~(according to)~~) per the procedure specified in Rule 1.8.

(g) Failure to pay annual registration fees is a violation of these Regulations and will result in the issuance of a Notice of Violation and prescribed penalties.

(h) On a periodic basis, the Agency (~~(shall)~~) conducts a workload analysis to determine the adequacy of annual registration fees in funding the Agency's Registration Program. The workload analysis (~~(shall be)~~) is based on the Agency's historical record of time and resource expenditures associated with the registration program. The workload analysis (~~(shall)~~) will be presented to the Board periodically. Any proposed revisions to the annual registration fee schedule (~~(shall)~~) must be presented to the Board for adoption after public noticing pursuant to these Regulations public noticing requirements and opportunity for a public hearing.

(i) All registered sources needing to be re-inspected, due to verified conditions or actions caused by the source, will be charged an additional amount as specified in the Registration Fee Schedule.

(j) The Agency's Registration fees (~~(shall be sufficient to)~~) must cover the direct and indirect cost of the Registration program as specified in RCW 70A.~~(94)~~15.~~(151)~~2200.

(k) The applicable fees (~~(shall be)~~) are established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

**Table 3.1: Pollutants Considered For Fees**

|   |
|---|
| Total Suspended Particulates (TSP)          |
| Carbon Monoxide (CO)<br>Sulfur Oxides (SOx) |
| Nitrogen Oxides (NOx)                       |
| Volatile Organic Compounds (VOC)            |
| Toxic Air Pollutants (TAP)                  |

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**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.

**AMENDATORY SECTION**

**RULE 3.2 OPERATING PERMIT FEES**

(a) Fee Applicability. Any source or area source in the Agency's jurisdiction subject to the requirement to obtain an Operating Permit pursuant to 40 CFR Part 70 or RCW 70A.~~(94)~~15.~~(161)~~2260 (Title V sources), except those Title V sources for which air emissions are regulated by the Washington State Department of Ecology or Energy Facility Site Evaluation Council (EFSEC), (~~(shall)~~) must pay annual fees to the Agency (~~(according to)~~) per the provisions in this rule.

(b) Operating Permit Program Account. The Agency (~~(shall)~~) must maintain a dedicated account for the Air Operating Permit Program. The account (~~(shall)~~) will be funded exclusively by fee revenue from annual fees collected from Title V sources within the jurisdiction of the Agency. All fee revenue collected under Rule 3.2 (~~(shall)~~) must be deposited in the Air Operating Permit account.

(c) Operating Permit Program Funding. The sum of fees assessed by the Agency under Rule 3.2 (~~(shall be sufficient to)~~) covers all direct and indirect costs of developing and administering the Agency's Oper-

ating Permit Program including Ecology's cost for development and oversight of the Agency's Operating Permit Program, as provided in RCW 70A.~~((94))~~15.~~((162))~~2270.

**(d)** Ecology Development and Oversight Fees. The Agency ~~((shall))~~ assesses an annual Ecology Development and Oversight Fee to all Title V sources within the jurisdiction of the Agency. The total amount of Ecology Development and Oversight Fees assessed annually by the Agency ~~((shall))~~ equals Ecology's annual cost of development and oversight of the Agency's Operating Permit Program, as provided in RCW 70A.~~((94))~~15.~~((162))~~2270.

**(e)** Annual Fees, Existing Title V Sources. The Agency ~~((shall))~~ assesses an Annual Fee to all existing Title V sources. The total amount of Annual Fees assessed by the Agency to existing Title V sources ~~((shall))~~ must equal the projected net annual cost to administer the Agency's Operating Permit Program during the current fiscal year.

**(f)** Net Annual Cost Projections. Projected net annual cost to administer the Agency's Operating Permit Program ~~((shall))~~ will be determined annually and ~~((shall))~~ must equal the projected annual cost to administer the program minus any balance of funds in the Operating Permit Program account at the end of the previous fiscal year. Projected annual costs ~~((shall))~~ include all direct and indirect costs to administer the Agency's Operating Permit Program and ~~((shall-be))~~ is based on a workload analysis conducted by staff. Net annual cost projections including the workload analysis ~~((shall))~~ must be included in the Agency's annual budget and approved by resolution of the Agency's Board of Directors in a public hearing.

**(g)** Workload Analysis. Only fee eligible activities as specified below, as provided in RCW 70A.~~((94))~~15.~~((162))~~2270, ~~((shall-be))~~ are considered in the workload analysis conducted annually by staff. Fee eligible activities ~~((shall))~~ will include:

- (1)** Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or permit renewal;
- (2)** Source inspections, testing, and other data gathering activities necessary for development of a permit, permit revision or renewal;
- (3)** Acting on an application for a permit, permit revision or renewal, including the cost of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet, preparing a proposed permit, and preparing a final permit;
- (4)** 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;
- (5)** Modeling necessary to establish permit limits or to determine compliance with the permit limits;
- (6)** Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;
- (7)** Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a source is complying with permit conditions;
- (8)** Administrative enforcement activities and penalty assessment, excluding the cost of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

- (9) The share attributable to permitted sources to the development and maintenance of emissions inventories;
  - (10) The share attributable to permitted sources of the ambient air quality monitoring and associated recording and reporting activities;
  - (11) Training for permit administration and enforcement;
  - (12) Fee determination, assessment, and collection, including the cost of necessary administrative dispute resolution and enforcement;
  - (13) Required fiscal audits, periodic performance audits and reporting activities;
  - (14) Tracking of time, revenues and expenditures and accounting activities;
  - (15) Administering the permit program including costs of clerical support, supervision, and management;
  - (16) Provisions of assistance to small business under jurisdiction of the Agency as required under Section 507 of the Federal Clean Air Act; and,
  - (17) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.
- (h) Allocation of Fees. The Annual Fee for a Title V source (~~shall~~) will be calculated using the following three-part fee allocation equation:

**Table 3.2a: Operating Permit Fee Formulas**

| Annual Fee = Facility Fee + Equipment Fee + Emissions Fee   |
|---|
| <p>WHERE:</p> <p>Facility Fee = <math>(\text{Annual Net Cost} \div 3) \div n</math></p> <p>Equipment Fee = <math>[(\text{Annual Net Cost} \div 3) \div U_{\text{total}}] \times U_{\text{source}}</math></p> <p>Emissions Fee = <math>[(\text{Annual Net Cost} \div 3) \div E_{\text{total}}] \times E_{\text{source}}</math></p> <p>Annual Net Cost = Projected net annual cost as approved by the Agency's Board of Directors.</p> <p>n = Total number of Title V sources in the Agency's jurisdiction. Note, each area source category requiring a Title V permit (<del>shall</del>) <u>will</u> be counted as one source (<del>for purposes of</del>) <u>in</u> determining "n." However, the facility fee for an area source category (<del>shall</del>) <u>will</u> be divided equally among all individual area sources within the area source category.</p> <p>U<sub>total</sub> = Total number of emission units located at Title V sources in the Agency's jurisdiction.</p> <p>U<sub>source</sub> = Number of emission units at the specific Title V source. For area source categories requiring a Title V permit, "U<sub>source</sub>" is the number of individual area sources within the area source category that have been identified within the Agency's jurisdiction. However, the emission unit fee for an area source category (<del>shall</del>) <u>will</u> be divided equally among all individual area sources within the area source category.</p> <p>E<sub>total</sub> = Total actual annual emissions of the air pollutants <u>subject to fees</u> (<del>listed in Table 5.2b, except CO,</del>) from Title V sources based on the Agency's most recent emissions inventory.</p> <p>E<sub>source</sub> = Total actual annual emissions of the air pollutants (<del>listed in Table 5.2b, Rule 5.2, except CO</del>) <u>subject to fees</u>, from the specific Title V source for the most recent calendar year. For area source categories requiring a Title V permit, "E<sub>source</sub>" is the total actual annual emissions from the area source category. However, the Emissions Fee for an area source category (<del>shall</del>) <u>will</u> be divided equally among all individual area sources within the area source category.</p> <p><u>Air pollutants subject to fees =</u><br/> <u>Total Particulates (TSP)</u><br/> <u>Sulfur Oxides (SOx)</u><br/> <u>Nitrogen Oxides (NOx)</u><br/> <u>Volatile Organic Compounds (VOC)</u><br/> <u>Toxic Air Pollutants</u></p> |

(i) Initial Fees. New Title V sources (~~shall~~) will be assessed an Initial Fee after commencement of operation to cover the Agency's cost of administering the program for the new Title V source for the remainder of the current fiscal year. The Initial Fee for a new Title V source (~~shall~~) will equal the Annual Fee based on Rule 3.2(h), which would otherwise be assessed if the Title V source commenced operation on or prior to the beginning of the current fiscal year, prorated by multiplying by the number of months remaining in the current fiscal year divided by 12.

(j) Fee Assessment and Payment Schedule. The Agency (~~shall~~) sends Annual Fee invoices on or after August 1 of each year to cover the cost of administering the program for the current fiscal year commencing on July 1 and ending on June 30. (~~Upon receipt of a fee invoice from ORCAA,~~) Annual Fees are due and payable and (~~shall~~) will be deemed delinquent if not fully paid (~~within thirty (30) days~~) on or before the due date on the invoice. However, option (~~shall~~) will be given to pay Annual Fees in quarterly installments. Owners or operators may choose to pay their Annual fees in quarterly installments by (~~indicating so on~~) signing the (~~fee~~) invoice payment addendum received and remit (~~ting~~) it with payment of the first quarterly installment (~~back~~) to the Agency on or before the due date on the invoice. After initial payment, (~~These~~) the remaining installments (~~shall~~) must be received (~~due~~) on or before October 1, January 1, and April 1 (~~, following initial payment~~). Quarterly installments (~~shall be~~) are equal to twenty-five percent (25%) of the total fee.

(k) Late Payment. Any Title V source which does not pay the Annual Fee or installment by the Invoice Due date (~~as posted on the invoice shall~~) will be assessed a late penalty equal to twenty-five percent (25%) of the (~~fee amount~~) balance due. Any penalty (~~shall be~~) is in addition to the fee (~~amount due~~).

(l) Appeal of Annual Fees. Annual Fees may be appealed (~~according to~~) per the procedure specified in Rule 1.8. The basis for such appeals (~~shall be~~) is limited to arithmetic or clerical errors.

(m) Exemption from Rule 3.1 fees. Title V sources assessed annual fees under Rule 3.2 (~~shall~~) are not (~~be~~) subject to annual Registration Program Fees under Rule 3.1 of Regulation 3.

(n) Transfer of Ownership. Transfer of ownership of a Title V source (~~shall~~) does not affect any obligation to pay fees required by Rule 3.2. Any liability for fee payment, including payment of delinquent fees and other penalties (~~shall~~) survives any transfer of ownership of a Title V source.

(o) Accountability. The sum of the fees assessed by the Agency to all Title V sources within the Agency's jurisdiction (~~shall~~) will not exceed the cost of developing and administering the program. The Agency (~~shall~~) keeps record of all direct and indirect costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information (~~shall be~~) is used by the Agency in determining the net annual cost projections required by Rule 3.2(f) above. Provided, however, the information obtained from tracking revenues, time, and expenditures (~~shall~~) will not provide a basis for challenge to the amount of an individual source's fee.

**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

### RULE 3.3 NOTICE OF CONSTRUCTION FEES

(a) Fees for processing a Notice of Construction (NOC) application (~~shall~~) must include Filing Fees (~~according to~~) per Rule 3.3(b) and any applicable Additional NOC Processing Fees (~~according to~~) per Rule 3.3(c). Other cost to the agency of work performed outside of the agency in conjunction with approving an NOC application (~~shall~~) must be directly reimbursed to the agency (~~according to~~) per Rule 3.3(d).

(b) Filing Fees. A Filing Fee (~~according to~~) per the Notice of Construction Fee Schedule (~~shall~~) must be paid for each proposed piece of equipment or process, or for groups of identical equipment or

processes that, if considered individually would be subject to an NOC. Filing Fees (~~(shall)~~) will be assessed and paid as follows:

- (1) An NOC application may not be deemed complete unless initial Filing Fees have been paid in full.
- (2) Equipment or processes may be considered identical and subject to a single filing fee provided:
  - (i) They are identical in size and capacity;
  - (ii) Employ identical air pollution control technology;
  - (iii) Use the same fuel types;
  - (iv) Are subject to the same performance standards and air regulatory determinations; and,
  - (v) May be considered as a single emission(~~s~~) point for (~~the purpose of~~) determining ambient air quality impacts.
- (3) Payment of NOC Filing Fees (~~(shall be)~~) is due (~~(no later than)~~) on or before the Invoice Due Date (~~(as posted on the invoice)~~) unless the Executive Director has approved an alternative payment plan (~~(has been approved by the Executive Director)~~).
- (c) Additional NOC Processing Fees. Additional NOC Processing Fees (~~(shall)~~) must be paid at a rate as specified in the Notice of Construction Fee Schedule for direct time expended by agency staff working on any of the items or actions described in Table 3.3. If required, additional NOC Processing Fees (~~(shall)~~) will be determined and paid as follows:
  - (1) Additional NOC Fees may be assessed periodically as work to complete the items in Table 3.3 incurs, but not more frequently than monthly.
  - (2) All Additional NOC Processing Fees (~~(shall)~~) must be assessed and paid prior to issuing any Final Determination on an NOC application unless the Executive Director has approved an alternative payment plan (~~(has been approved by the Executive Director)~~).
  - (3) Payment of any Additional NOC Processing Fee (~~(shall be)~~) is due (~~(no later than of)~~) on or before the Invoice Due date (~~(as posted on the invoice)~~) unless the Executive Director has approved an alternative payment plan (~~(has been approved by the Executive Director)~~).
  - (4) The Executive Director may approve an alternative payment plan (~~(provided that the plan)~~) if a request is submitted in writing by the applicant.
  - (5) In computing fees based on hourly rates, only hours attributed directly to completing tasks listed in Table 3.3 (~~(shall)~~) will be used in computing fees.
  - (6) The total hours used in computing fees (~~(shall)~~) will be based on the agency's official time accounting records.
- (d) **Other Costs.** The following other costs (~~(shall)~~) must be borne by the applicant and paid prior to issuing any Final Determination on an NOC application unless an alternative payment plan has been approved by the Executive Director:
  - (1) The cost of publishing any required notice
  - (2) Consulting cost incurred by the agency in conjunction with approving an NOC application.
- (e) Late Payment Penalties. Failure to pay, in full, any assessed NOC fee on or before (~~(by)~~) the due date as stated on the invoice, (~~(shall)~~) may incur a late payment penalty in the amount of 25% of the total amount due.
- (f) The Agency's NOC fees (~~(shall be sufficient to)~~) cover the direct and indirect cost of processing an NOC application and (~~(shall)~~) will be determined through a workload-driven process as allowed under RCW 70A.~~(94)~~15.~~(152)~~2210.

(g) On a periodic basis, the Agency (~~shall~~) reviews the Notice of Construction Fee Schedule based on a workload-driven process and determines if the total actual fee revenue is sufficient to recover program costs as allowed in RCW 70A.~~(94)~~15.~~(152)~~2210. Any proposed fee revision (~~shall~~) must be Board approved and (~~shall~~) includes opportunity for public review and comment.

(h) The Applicable fee(s) (~~shall~~) will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

**Table 3.3: Additional NOC Processing Fees**

| Fee-Eligible Item                     | Description  |
|---------------------------------------|--|
| NOC Application Assistance            | Direct technical assistance completing an NOC application, including, but not limited to calculating emissions, filling out standard forms, determining applicable requirements, completing a BACT analysis, performing an air toxics screening analysis pursuant to chapter 173-460 WAC, or selecting monitoring equipment. An NOC Application Assistance fee may only be assessed if the fee rate is disclosed to the applicant and applicant requests such assistance in writing. |
| Work Exceeding Base-Fee Hours         | Direct work attributed to processing an NOC application ( <del>in excess of</del> ) <u>more than</u> the sum of applicable base-fee hours stated in the Notice of construction Fee Schedule for each piece of equipment or process subject to an NOC.  |
| State Environmental Policy Act (SEPA) | SEPA-related work such as reviewing Environmental Checklists, making threshold determinations, preparing Determinations of Nonsignificance (DNS) and other SEPA-related reports.   |
| Public Noticing                       | Work directly associated with issuing public notice pursuant to WAC 173-400-171 and Rule 6.1.3 ( <del>(e)</del> ) of ORCAA's Regulations. Associated work includes issuing a press release if warranted, copying, and posting the written Preliminary Determination for public viewing, and reviewing and responding to comments.  |
| Public Hearing                        | Work associated with conducting a public hearing including, but not limited to, preparation of summary materials, copying, issuing hearing notice, conducting the hearing, and responding to comments  |

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**Reviser's note:** The typographical 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.

**AMENDATORY SECTION**

**RULE 3.4 OUTDOOR BURNING PERMIT FEES**

The applicable fee(s) for the following Permits (~~shall~~) will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

(a) The fee for an Agricultural Burn Permit is specified in the Outdoor Burning Fee Schedule.

(b) The fee for a Land Clearing Burn Permit is specified in the Outdoor Burning Fee Schedule. The fees (~~shall be sufficient to~~) must cover the direct and indirect cost of the Land Clearing Burn Permit program and (~~shall~~) will be determined through a workload-driven process.

**AMENDATORY SECTION**

**RULE 3.5 ASBESTOS FEES**

The applicable fee(s) for Asbestos and Demolition Notifications (~~shall~~) will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

The fees (~~(shall be sufficient to)~~) must cover the direct and indirect ~~c~~(d)ost of the asbestos program and (~~shall~~) will be determined through a workload-driven process.

#### AMENDATORY SECTION

##### RULE 3.6 NOTICE OF INTENT TO OPERATE FEES

(a) The submittal of a Notice of Intent to Operate (NOI) (~~shall~~) must be accompanied by the appropriate fees as specified in the Notice of Intent Fee Schedule.

(b) The applicable fee(s) (~~shall~~) will be established in the current fee schedule adopted by Resolution of the Board of Directors of ORCAA.

(c) The Agency's fees (~~shall be sufficient to~~) must cover the direct and indirect costs of the NOI application process and (~~shall~~) will be determined through a workload-driven process.

#### AMENDATORY SECTION

##### RULE 4.1 REGISTRATION REQUIRED

(a) All stationary sources within the jurisdiction of the Agency, except for any stationary sources required to obtain an air operating permit under chapter 173-401 WAC, (~~shall~~) must be registered with the Agency. Notwithstanding the exemptions provided in Rule 4.1(b), the following stationary sources (~~shall~~) must be registered with the Agency:

(1) Any stationary source subject to a standard under New Source Performance Standards, 40 CFR Part 60, except; New Residential Wood Heaters (Subpart AAA); Kraft Pulp Mills (Subpart BB); and Primary Aluminum Reduction Plants (Subpart S);

(2) Any stationary source subject to a performance standard under National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61(~~(-02)~~), except for asbestos demolition and renovation projects subject to 40 CFR Part 61(~~(-145)~~) Subpart M;

(3) Any stationary source subject to a performance standard under National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63(~~(-2)~~);

(4) Any stationary source that includes equipment or control equipment subject to an Approval Order issued by the Agency.

(b) The following stationary sources are exempt from registration requirements under Regulation 4. All stationary sources exempt from registration under Regulation 4 are still required to comply with other applicable air pollution requirements.

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 abrasives 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 non-volatile 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 cu ft);

(18) Storage tanks of a capacity of 10,000 gallons or less, with lids or other appropriate closure, used 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 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 70A.((94))15. ((610))4510; 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 ((≤)) less than 10 million Btu per hour.

(26) Stationary internal combustion engines having rated capacity:

(i) ((≤)) less than 50 horsepower output; or

(ii) ((≤)) less than 500 horsepower and used only for standby emergency power generation.

(27) ((All-n)) 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 (~~( $\leq$ )~~) less than 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 150°C or vapor pressure not more than 5 mm Hg @21°C, 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 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)~~) if they do not use anaerobic digesters, chlorine disinfections or sewer 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) Laboratory fume hoods;

(44) Laboratory calibration and maintenance equipment.

Monitoring/quality assurance/testing:

(45) Equipment and instrumentation used for quality control/assurance or inspection purpose;

(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) Fire((-))fighting and similar safety equipment and equipment used to train fire fighters;
- (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 @21°C, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);
- (73) Surface coating, aqueous solution or suspension containing ((<)) less than 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 ((<)) less than 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 office or residential housekeeping;
- (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 roaster 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 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 crushers less than or equal to 25 tons per hour;

(90) Any portable stationary source approved by the Agency for temporary operation at a single (~~temporary~~) location(~~s~~).

## AMENDATORY SECTION

### RULE 4.2 REGISTRATION PROGRAM

(a) Program purpose. As authorized by RCW 70A.~~((94))~~15. (~~((151))~~2200, the Agency's registration program is a program to develop and maintain a current and accurate record of stationary sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify stationary source compliance with applicable air pollution requirements.

(b) Program components. The components of the Agency's registration program (~~shall~~) include:

(1) Initial notification and annual or other periodic reports from owners of stationary sources providing the information described in Rule 4.3.

(2) On-site inspections necessary to verify compliance with applicable air pollution control requirements and/or to supplement information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(3) Maintenance of computers and software used to compile and retrieve information provided by owners of stationary sources relating to air contaminant emissions and compliance with air pollution control requirements.

(4) Compilation of emission inventory reports and computation of emission reduction credits from information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(5) Staff review, including engineering analysis for accuracy and correctness, of information provided by owners of stationary sources pursuant to the requirements of Rule 4.3.

(6) Clerical and other office support provided by the Agency in direct support of the registration program.

(7) Administrative support provided in directly carrying out the registration program.

(8) Assessment and collection of annual registration fees from all stationary sources requiring registration in accordance with Rule 3.1.

## AMENDATORY SECTION

### RULE 4.3 REQUIREMENTS FOR STATIONARY SOURCES SUBJECT TO REGISTRATION

(a) The owner or operator of any stationary source subject to registration under Rule 4.1 (~~shall~~) must register the stationary source by submitting an initial notification to the Agency of its existence within 30 days from:

(1) Commencement of operation of any new or recommissioned stationary source including those sources subject to prior approval by the Agency through a Notice of Construction under Rule 6.1; or,

(2) Change in ownership of an existing registered stationary source.

(b) Initial notification (~~(shall)~~) must include the following information:

- (1) Owner name, address, and phone number;
- (2) Source location;
- (3) Name, address, and phone number of on-site contact person;
- (4) Identification and brief description in terms of type, location and size or capacity, of each stationary source subject to registration;
- (5) Date each stationary source was constructed, installed, or established;
- (6) Date each stationary source commenced operation;
- (7) If subject to pre-construction review and approval by the Agency, the date of the approval and Notice of Construction application number.

(c) Owners or operators of any stationary source subject to registration (~~(shall)~~) must, upon request by the Agency, make annual and/or periodic reports to the Agency regarding emission sources, types and amounts of raw materials and fuels used, types, amounts and concentrations of air contaminants emitted, data on emissions units and control devices, data on emission points, and any other information directly related to the registration program as requested by the Agency.

(d) Annual and periodic reports as required by the Agency pursuant to Rule 4.3(c) (~~(shall)~~) must be made by the owner or lessee of the stationary source, or an agent, on forms provided by the Agency or in an Agency approved format. The owner of the stationary source (~~(shall be)~~) is responsible for completion and submittal of the annual or periodic report within thirty (30) days of receipt of the request and forms provided by the Agency. The owner of the stationary source (~~(shall be)~~) is responsible for the completeness and correctness of the information submitted.

(e) The owner or operator (~~(shall)~~) must notify the Agency of any changes in the following administrative information within 30 days from the change taking place:

- (1) Owner name, address, and phone number;
- (2) Name, address, and phone number of on-site contact person;
- (3) Process or equipment changes resulting in an increase in emissions. (~~(provided that e)~~) Changes requiring prior approval by the Agency through a Notice of Construction (NOC) or requiring submittal of a Notice of Intent to Operate (NOI) application (~~(shall)~~) must also comply with the requirements of Rule 6.1 and 6.4 respectively; and,
- (4) Any permanent shut down or decommissioning of a stationary source.

(f) Each notification or report required under this rule (~~(shall)~~) must be signed by the owner or operator of the stationary source, or by the agent appointed by the owner.

(g) The Agency may require the owner or operator of a stationary source develop and implement an Operations and Maintenance (O&M) plan to assure compliance with the applicable air regulations and standards. When required, a copy of the plan must be retained at the facility where the stationary source is located and must be available to the Agency for inspection. (~~(According to the schedule set forth below, owners or operators of stationary sources subject to registration pursuant to Rule 4.1 above shall develop, implement and update when necessary an Operations and Maintenance plan to assure continuous compliance with applicable air regulations and standards including OR-CAA's Regulations. Operation and Maintenance plans shall include, but~~

not be limited to, the measures listed in Rule 4.3(g)(2). A copy of the Operations and Maintenance plan shall be retained at the facility where the stationary source is located and shall be made available to all operators of the stationary source and the Agency upon request.

~~(1) Operation and Maintenance plans required by this rule shall be written, and shall be completed or updated, and fully implemented by the following due dates:~~

~~(i) No later than 120 days from initial registration with the Agency for existing stationary sources not yet registered with the Agency.~~

~~(ii) No later than 90 days from commencement of operation for newly constructed or established stationary sources requiring registration.~~

~~(2) Operation and Maintenance plans required pursuant to Rule 4.3(g) shall include, but not be limited to, the following types of measures:~~

~~(i) Periodic inspection of emission units and associated control devices to evaluate air contaminant control effectiveness and compliance with applicable emissions limits;~~

~~(ii) Measures for monitoring and recording of all emissions unit and control device performance when required by regulation or an approval order;~~

~~(iii) Procedures for facilitating prompt repair of any defective equipment or control device associated with air contaminant emissions;~~

~~(iv) A system for logging all actions required by the plan;~~

~~(v) Standard procedures for responding to air quality related complaints received by the facility where the stationary source is located; and,~~

~~(vi) General policy and measures for minimizing dust emissions and odors.)~~

~~(h) Owners or operators of stationary sources subject to registration ((shall)) will be classified ((according to)) per Rule 4.4 and ((shall)) must pay annual registration fees pursuant to Rule 3.1.~~

**AMENDATORY SECTION**

**RULE 4.4 CLASSIFICATION OF SOURCES REQUIRED TO REGISTER WITH AGENCY**

All sources requiring registration pursuant to Rule 4.1 ((shall)) will be classified in one of the registration class((es))ifications listed in Table 4.4b. A source will be placed in the most appropriate classification as determined by the Agency. ((For purposes of)) To determine classification, the pollutants listed in Table 4.4a will be considered.

**Table 4.4a: Pollutants**

- |                                    |
|------------------------------------|
| Total Suspended Particulates (TSP) |
| Sulfur Oxides (SOx)                |
| Nitrogen Oxides (NOx)              |
| Volatile Organic Compounds (VOC)   |
| Carbon Monoxide (CO)               |
| Toxic Air Pollutants (TAP)         |

**Table 4.4b: Registration Class((es))ification (RC)**

- |  |
|--|
| CLASSIFICATION RC1 - Any source that has an effective Synthetic Minor Order issued pursuant to WAC 173-400-091.                          |
| CLASSIFICATION RC2 - Any source with a potential to emit 30 tons or more per year of any combination of pollutants listed in Table 4.4a. |

CLASSIFICATION RC3 - Any source with a potential to emit 10 tons or more per year of any combination of pollutants listed in Table 4.4a.

CLASSIFICATION RC4 - Any source, with a potential to emit 5 tons or more per year of any combination of pollutants listed in Table 4.4a.

CLASSIFICATION RC5 - Any source with a potential to emit less than 5 tons per year of any combination of pollutants listed in Table 4.4a.

## REPEALED

~~( (RULE 4.5 REGISTRATION OF PORTABLE EQUIPMENT (TEMPORARY PORTABLE SOURCES)~~

~~(a) Notice of Intent to Operate. The owner or operator of the following sources shall notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NOI) in accordance with rule 6.1.1:~~

~~(1) Relocation of temporary portable stationary sources that have a valid Order of Approval from Ecology or an air pollution control authority in the State of Washington; and,~~

~~(2) Nonroad engines, provided that the regulation of nonroad engines under this rule are subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 - State Regulation of Nonroad Internal Combustion Engines.~~

~~(b) Requirements for Operation. Sources subject to rule 4.5(a) shall meet the operating requirements established under Rule 6.1.7.)~~

## AMENDATORY SECTION

### RULE 5.1 OPERATING PERMIT PROGRAM

(a) Purpose. The purpose of this rule is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70A.((94))15.((161))2260 and its implementing regulation chapter 173-401 WAC.

(b) Commitment to administer the program. ((Olympic Region Clean Air Agency (-)) The Agency ((+))), provided full or partial delegation by the US Environmental Protection Agency (EPA) and the Washington Department of Ecology ((DØ)ECY), ((shall)) will administer an air operating permit program for the Agency's jurisdiction in accordance with Title V of the Federal Clean Air Act Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70A.((94))15.((161))2260 and its implementing regulation chapter 173-401 WAC.

(c) Applicability. The provisions of this rule apply to all sources subject to the requirements of chapter 173-401 WAC.

(d) Compliance. It ((shall be)) is unlawful for any person to cause or allow the operation of any source subject to the requirements of chapter 173-401 WAC without complying with the provisions of chapter 173-401 WAC and any permit issued under its authority.

## AMENDATORY SECTION

### RULE 5.2 (RESERVED) ((CLASSIFICATION OF SOURCES

~~(a) All air contaminant sources required an operating permit pursuant to Title V of the Federal Clean Air Act (FCAA), RCW 70-94-161, or ORCAA's Regulations shall be classified in one of the operating permit program source classification categories (OP#) listed in Table 5.2a. A source will be placed in the most appropriate classification category as determined by the Agency.~~

~~(b) For purposes of source classification, the pollutants listed in Table 5.2b will be considered. Air contaminant emissions from a~~

source shall be categorized in the most appropriate pollutant category as determined by the Agency.

~~(c) Air contaminant emissions counted as toxic air pollutants shall not be double-counted under any other air pollutant for purposes of classification.~~

**Table 5.2a: Operating Permit Program Source Classification**

|   |
|---|
| <p>CLASS OP1 - Any source with a potential to emit 100 tons per year or more of any pollutant listed in Table 5.2b.</p> <p>CLASS OP2 - Any source, except those sources classifiable under OP1, with a potential to emit 10 tons or more per year of any toxic air pollutants or 25 tons or more per year of any combination of toxic air pollutants.</p> <p>CLASS OP3 - Any air contaminant source requiring a general operating permit pursuant to Title V, section 504(d) of the Federal Clean Air Act (FCAA).</p> <p>CLASS OP4 - Any other source, except those sources classifiable under OP1, OP2, or OP3 requiring an Operating Permit pursuant to Title V of the Federal Clean Air Act (FCAA), RCW 70.94.161, or ORCAA's Regulations.</p> |
|---|

**Table 5.2b: Regulated Pollutants**

|   |
|---|
| <p>Total Particulates (TSP)</p> <p>Sulfur Oxides (SOx)</p> <p>Nitrogen Oxides (NOx)</p> <p>Volatile Organic Compounds (VOC)</p> <p>Carbon Monoxide (CO)</p> <p>Toxic Air Pollutants</p> |
|---|

) )

**AMENDATORY SECTION**

**RULE 5.3 RESTRICTING THE POTENTIAL TO EMIT**

A service-based fee, in addition ~~((a1))~~ to annual registration or operating permit fees, ~~((shall))~~ will be assessed to those sources applying to the Agency for approval of enforceable conditions that restrict the sources' potential to emit, making the source a minor source and not subject to an operating permit. Fees for restricting a sources' potential to emit ~~((shall))~~ will be assessed ~~((according to))~~ per Regulation 3, Rule 3.3. The Agency ~~((shall))~~ assesses the fee based on only those emissions units affected by the enforceable condition as proposed by the applicant.

**AMENDATORY SECTION**

**REGULATION 6 - REQUIRED PERMITS AND NOTIFICATIONS**

**RULE 6.1 NOTICE OF CONSTRUCTION REQUIRED**

(a) Approval of a Notice of Construction (NOC) Application required. It ~~((shall be))~~ is unlawful for any person to cause or allow the following actions unless a Notice of Construction application has been filed with and approved by the Agency, except for those actions involving stationary sources excluded under Rule 6.1 (b) and (c):

- (1) Construction, installation, or establishment of any stationary source;
- (2) Modification to any existing stationary source; or,
- (3) Replacement or substantial alteration of emission control technology installed on an existing stationary source.

(b) Exemption provided Notice of Intent to Operate (NOI). An NOC application and ~~((prior))~~ approval by the Agency is not required prior to construction, installation, establishment, or modification of the stationary sources listed in Rule 6.4 ~~((below))~~ if a complete Notice of Intent to Operate is filed with the Agency per that section. ~~((Procedures for submitting an NOI are contained in 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 have a combined uncontrolled 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) The de minimis emission rate specified for each Toxic Air Pollutant listed in WAC 173-460-150; and,~~

~~(E) 1.0 tons per year of ozone depleting substances combined.~~

~~(3) Gasoline Dispensing Facilities (GDF). Construction or modification of a gasoline dispensing facility, or replacement or substantial alteration of vapor recovery systems, provided that:~~

~~(i) The installed equipment is in accordance with the current California Air Resources Board (CARB) Executive Orders listed on the GDF Notification form effective at the time of the filing;~~

~~(ii) The GDF is not part of a stationary source subject to the Air Operating Program (Rule 5);~~

~~(iii) The GDF is not subject to any of the Stage II requirements in WAC 173-491-040(5); and~~

~~(iv) The project does not involve the removal of a Stage II vapor recovery system.)~~

~~(c) 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, if sufficient records are kept documenting 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 non-volatile 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 cu ft);

(18) Gasoline storage tanks less than 2,000 gallons storage capacity;

(19) Gasoline dispensing facilities with a cumulative gasoline storage capacity of less than 10,000 gallons;

(20) 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);

(21) 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);

(22) Storage tanks of a capacity of 40,000 gallons or less used for the storage of butane, propane, or liquefied petroleum gas;

(23) Tanks, vessels, and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases, and acids.

(24) Storage tanks used exclusively for storage of diesel fuel;

(25) Loading and unloading equipment used exclusively for the storage tanks exempted under this rule.

Combustion:

(26) 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 70A.((94))15. ((610))4510; 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.

(27) All stationary gas turbines with a rated heat input ((≤)) less than 10 million Btu per hour.

(28) Stationary internal combustion engines having rated capacity:

(i) ((≤)) less than 50 horsepower output; or

(ii) ((≤)) less than 500 horsepower and used only for standby emergency power generation.

(29) ((All-n)) Nonroad engines ((subject to 40 CFR Part 89)).

Material handling:

(30) Storage and handling of water-based lubricants for metal working where organic content of the lubricant is ((≤)) less than 10%;

(31) 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

150°C or vapor pressure not more than 5 mm Hg @ 21°C, with lids or other appropriate closure.

Water treatment:

(32) Septic sewer systems, not including active wastewater treatment facilities;

(33) NPDES permitted ponds and lagoons used solely for (~~the purpose of~~) settling and suspended solids and skimming of oil and grease;

(34) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(35) Process water filtration system and demineralizer vents;

(36) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems (does not include engines);

(37) Demineralizer tanks;

(38) Alum tanks;

(39) Clean water condensate tanks;

(40) Oil/water separators, except those at petroleum refineries;

(41) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(42) 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:

(43) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(44) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(45) Installation or modification of a single laboratory fume hood;

(46) Laboratory calibration and maintenance equipment.

Monitoring/quality assurance/testing:

(47) Equipment and instrumentation used for quality control/assurance or inspection purposes;

(48) Hydraulic and hydrostatic testing equipment;

(49) Sample gathering, preparation and management;

(50) Vents from continuous emission monitors and other analyzers.

Miscellaneous:

(51) Single-family residences and duplexes;

(52) Plastic pipe welding;

(53) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(54) Insecticide, pesticide, or fertilizer spray equipment;

(55) Comfort air conditioning;

(56) Flares used to indicate danger to the public;

(57) Natural and forced air vents and stacks for bathroom/toilet activities;

(58) Personal care activities including establishments like beauty salons, beauty schools, and hair cutting establishments;

(59) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(60) Tobacco smoking rooms and areas;

(61) Noncommercial smokehouses;

(62) Blacksmith forges for single forges;

- (63) Vehicle maintenance activities, not including vehicle surface coating;
- (64) Vehicle or equipment washing;
- (65) Wax application;
- (66) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- (67) Ozone generators and ozonation equipment;
- (68) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- (69) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- (70) Pneumatically operated equipment, including tools and hand-held applicator equipment for hot melt adhesives;
- (71) Fire fighting and similar safety equipment and equipment used to train fire fighters;
- (72) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- (73) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- (74) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);
- (75) Surface coating, aqueous solution or suspension containing ((≤)) less than 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
- (76) Cleaning and stripping activities and equipment using solutions having ((≤)) less than 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
- (77) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.
- (78) Laundry dryers, extractors or tumblers used exclusively for the removal of water from fabric;
- (79) Residential composting facilities;
- (80) Restaurants and other retail food preparing establishments;
- (81) Routing, turning, carving, cutting, and drilling equipment used for metal, wood, plastics, rubber, leather, or ceramics;
- (82) Steam cleaning equipment used exclusively for that purpose;
- (83) Vacuum cleaning systems used exclusively for office or residential housekeeping;
- (84) Vacuum producing devices used in laboratory operations and vacuum producing devices that do not remove or convey air contaminants from or to another source;
- (85) Vents used exclusively for:
- (i) Sanitary or storm drainage systems; or
- (ii) Safety valves
- (86) Washing or drying equipment used for products fabricated from metal or glass, if no volatile organic material is used in the process.
- (87) Welding, brazing, or soldering equipment;
- (88) Coffee roasters with a design capacity less than 10 pounds per batch;
- (89) Bark and soil screening operations;
- (90) 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;

(91) 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 section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

### RULE 6.1.1 ~~RESERVED~~ (~~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 (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 6.1.2 Application Processing

(a) Application certification. All NOC applications (~~shall~~) must be signed by the applicant or owner, who may be required to submit evidence of their authority.

(b) Completeness determination. Within thirty (30) days after receiving an NOC application, the Agency (~~shall~~) will 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. Complete applications (~~shall~~) must include:

(1) Any standard NOC form of the Agency that is applicable to the proposed stationary source or modification;

(2) An Environmental Checklist consistent with requirements in WAC 197-11-315 of the State Environmental Policy Act (SEPA), for any one of the following:

(i) A Determination of Non-significance (DNS) in accordance with WAC 197-11-340;

(ii) A Mitigated Determination of Non-significance (MDNS) in accordance with WAC 197-11-350; or,

(iii) Written statement by the applicant claiming that the proposed stationary source or modification is categorically exempt from SEPA.

(3) When applicable, all information required for review under WAC 173-400-117 and WAC 173-400-~~(141)~~ 700 through 750 and WAC 173-400-800 through 860;

(4) NOC processing fees in accordance with Rule 3.3 (b) and (c); and,

(5) Any additional information requested by the Agency that is necessary to make the determinations required under Rule 6.1.4.

(c) Timeframe for Public Involvement:

(1) For NOC applications subject to a mandatory public comment period pursuant to Rule 6.1.3(b), the Agency (~~shall~~) will issue a Preliminary Determination within 60 days from receipt of a complete application followed by a public comment period in accordance with Rule 6.1.3(c).

(2) For all other NOC applications, the Agency will post a public comment period in accordance with Rule 6.1.3(a) within 30 days from receipt of an application.

(d) Final determination schedule. Final Determination on an application subject to a mandatory public comment period in accordance with Rule 6.1.3(b) (~~shall~~) will be made as promptly as possible after close of the public comment period. Final Determination on all other applications (~~shall~~) will be made within sixty (60) days of receipt of a complete NOC application.

(e) Approval. A final determination to approve an NOC application and an "Order of Approval," setting forth the conditions of approval, (~~shall~~) will be issued, and served as provided for in these Regulations, provided the following conditions are met:

(1) A complete application in accordance with Rule 6.1.2(b) was received by the Agency;

(2) The application verifies to the Agency that the applicable new source review requirements in Rule 6.1.4 have been met;

(3) Application processing fees in accordance with Rule 3.3 have been paid;

(4) The application includes an environmental checklist and other documents that verify compliance with the State Environmental Policy Act;

(5) Applicable public involvement requirements in Rule 6.1.3 have been met; and,

(6) The NOC has been signed by the Executive Director of the Agency or an authorized representative.

(f) Denial. If the Agency determines that a proposed project subject to approval of an NOC application does not meet the applicable approval requirements in Rule 6.1.(4)3, then a final determination to deny approval and an Order to Deny Construction (~~shall~~) will be issued and served as provided for in these Regulations. Any Order to Deny Construction (~~shall~~) must:

(1) Be in writing;

(2) Set forth the objections in detail (~~with reference~~) regarding (~~to~~) the specific law or rule or rules of these Regulations that will not be met by the proposed project; and,

(3) (~~Shall~~) Must be signed by the Executive Director of the Agency or an authorized representative.

(g) Scope of review of modifications. New source review of a modification to an existing stationary source (~~shall be~~) is limited to the emission unit proposed to be modified, and the air contaminants whose emissions would increase because (~~as a result~~) of the action; provided, however, that review of a major modification must also comply with applicable major new source review requirements under Rule 6.1.4(a) and/or Rule 6.1.4(b), as applicable.

(h) Integration with Title V permitting requirements. A person seeking approval to construct or modify a stationary source subject to chapter 173-401 WAC may elect to integrate review of the operating permit application or amendment required under RCW 70A.~~(94)~~15.

~~((161))~~ 2260 and the NOC application required by this rule. An NOC application designated for integrated review ~~((shall))~~ will be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. Applications submitted under WAC 173-400-700 through 750 and WAC 173-400-800 through 860 ~~((A PSD application under WAC 173-400-141, an NOC application for a major modification in a non-attainment area or an NOC application for a major stationary source in a nonattainment area))~~ must also comply with public involvement requirements of Rule 6.1.3 and WAC 173-400-171.

~~((i))~~ Professional ~~((-))~~ Engineer ~~((-))~~ review and sign-off. Every final determination on an NOC application ~~((shall))~~ must be reviewed and signed prior to issuance by a professional engineer, or staff under the direct supervision of a professional engineer ~~((, in the employ of the Agency))~~.

~~((j))~~ Appeals.

~~((1))~~ Any order issued pursuant to this Rule may be appealed to the Pollution Control Hearings Board of the State of Washington, pursuant to Rule 1.8.

~~((2))~~ Any order issued or the failure to issue such an order, ~~((shall))~~ does not relieve any person from their obligation to comply with any emission control requirement or with any other provision of law.

~~((k))~~ Major NSR obligations of the Agency. If the new stationary source is a major stationary source, or the change is a major modification, the Agency ~~((shall))~~ will:

~~((1))~~ Submit any control technology determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

~~((2))~~ Send a copy of the final approval order to EPA.

~~((1))~~ Deviations from approved plans. After approval to construct, install, establish, or modify a stationary source or air pollution control device is granted, deviations from the approved plans, drawings, data, and specifications that may result in changes to air pollutant emission rates, control efficiencies or impacts are not permissible without prior approval through an NOC application.

**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.

## **AMENDATORY SECTION**

### **Rule 6.1.3 Public Involvement**

The public ~~((shall))~~ will be afforded an opportunity to express interest in any Notice of Construction (NOC) application prior to approval or denial by the Agency.

~~((a))~~ Public Notice.

~~((1))~~ A public interest fact sheet ~~((shall))~~ must be published on the Agency's ~~((internet homepage))~~ website announcing the receipt of permit applications and other proposed actions that do not automatically require a public comment period pursuant to Rule 6.1.3(b). Fact sheets ~~((shall))~~ must be published on the Agency's ~~((Internet homepage))~~ webpage for a minimum of fifteen (15) days. ~~((In the event that))~~ If publication ~~((of))~~ to the Agency's ~~((Internet homepage))~~ website is not possible, the fact sheet will be published in a newspaper of general circulation in the area of the proposed action. When published in a newspaper, fact sheets will be published for a minimum of one (1) day.

~~((2))~~ The ~~((general))~~ public ~~((shall))~~ must be afforded a minimum of fifteen (15) days from initial publishing of a fact sheet to ex-

press an interest in a (~~particular~~) permit application or proposed decision by responding to the Agency in writing via letter, fax, or email.

(3) Public interest fact sheets (~~shall~~) must include:

- (i) The name of the applicant;
- (ii) Location of the proposed project;
- (iii) A brief project description;
- (iv) Agency contact information;

(v) Procedures for submitting comments and the date by which public comments are due;

(vi) A statement that a public comment period will be provided if requested by any person, government agency, group, or the applicant.

(4) Requests for a public comment period (~~shall~~) must be submitted to the Agency in writing via letter, fax, or electronic mail. A public comment period (~~shall~~) must be provided pursuant to Rule 6.1.3(c) for any permit application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement.

(5) The Agency (~~shall~~) must consider comments submitted in accordance with Rule 6.1.3 (a) (2) provided they are received prior to close of the comment period specified in the public interest fact sheet.

(b) Mandatory public comment period. A public comment period in accordance with Rule 6.1.3(c) (~~shall~~) must be required prior to approval or denial of any NOC application if:

(1) The proposed project would cause a significant net increase in emissions of any air contaminant listed in the following table:

**Table 6.1a: Significant Emissions Increase**

| AIR CONTAMINANT   | POTENTIAL TONS/YEAR |
|---|---------------------|
| Carbon Monoxide (C( <del>o</del> ) <u>O</u> )   | 100.0               |
| Volatile Organic Compounds (VOC)  | 40.0                |
| Sulfur Dioxide <u>SO</u> <sub>2</sub>   | 40.0                |
| Nitrogen Oxides (NO <sub>x</sub> )  | 40.0                |
| Particulate Matter (PM)   | 25.0                |
| Fine Particulate Matter (PM <sub>10</sub> )   | 15.0                |
| Lead  | 0.6                 |
| Fluorides   | 3.0                 |
| Sulfuric Acid Mist  | 7.0                 |
| Hydrogen Sulfide (H <sub>2</sub> S)   | 10.0                |
| Total Reduced Sulfur (including H <sub>2</sub> S)   | 10.0                |
| Total Toxic Air Pollutants (total TAPs)<br>(TAPs as listed in chapter 173-460 WAC)  | 25.0                |
| Any single Toxic Air Pollutant (TAP)  | 10.0                |
| Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 0.0000035           |

| AIR CONTAMINANT  | POTENTIAL TONS/YEAR |
|--|---------------------|
| Municipal waste combustor metals (measured as PM)  | 15.0                |
| Municipal waste combustor acid gases (measured as SO <sub>2</sub> and hydrogen chloride) | 40.0                |

(2) The applicant requests a limit on the potential to emit under Rule 6.1.12;

(3) The applicant requests to bank emission reduction credits;

(4) The proposed project involves refuse burning equipment;

(5) The Executive Director determines that there may be substantial public interest in the proposal;

~~((6) The applicant requests a change in any condition of an approval order that results in an increase in emissions or a substantial change to any monitoring, record keeping or reporting requirement of an approval order)~~

~~((7))~~ (6) The proposed action is to extend the deadline to begin construction of a major stationary source or major modification in a nonattainment area;

~~((8))~~ (7) A modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on June 1, 2003) was used as part of review under Rule 6.1.4;

~~((9))~~ (8) The action involves an order to determine a category wide RACT;

~~((10))~~ (9) The action involves establishing a compliance schedule or variance;

~~((11))~~ (10) The order is to demonstrate the credible height of a stack which exceeds the GEP formula height and sixty-five (65) meters, by means of a fluid model or a field study, or purposes of establishing an emission limitation;

~~((12))~~ (11) The action includes an order to authorize a bubble; or,

~~((13))~~ (12) A public comment period is requested by any person, interested governmental agency, group, or the applicant in accordance with requirements for under Rule 6.1.3(a).

(c) Public Comment period. If required, a public comment period ~~((shall))~~ must be initiated through posting on the Agency's website for the duration of the public comment period. The Agency may supplement this method of notification by publication of a legal notice in a ~~((local))~~ newspaper of daily circulation in the area of proposed action or by other methods appropriate to notify the local community. The public comment period ~~((shall))~~ can only be initiated ~~((only))~~ after all information required by the Agency has been submitted and after a Preliminary Determination has been made. The cost of any supplemental noticing ~~((providing legal notice shall))~~ must be borne by the applicant ~~((according to))~~ per provisions in Rule 3.3. Public notice of any NOC application requiring a public comment period ~~((shall))~~ must include the following:

(1) Availability of the NOC application and any written Preliminary Determination of the Agency in at least one location near the proposed project site ~~((and))~~ or on the Agency's ~~((Internet homepage))~~ website, excluding any confidential information as provided in Rule 1.6. The Agency's written Preliminary Determination ~~((shall))~~ must include the conclusions, determinations, and pertinent supporting infor-

mation from the Agency's analysis of the effect of the proposed project on air quality.

(2) Publication of a legal notice in a newspaper of general circulation in the area of the proposed project which provides:

(i) A brief description of the project;

(ii) Location of the project and location of documents made available for public inspection;

(iii) The deadline for submitting written comments;

(iv) A statement that any person, interested governmental agency, group, or the applicant may request a public hearing; and,

(v) A statement that a public hearing may be held if the Agency determines within a 30-day period that significant public interest exists; and,

(vi) The date of the close of the public comment period in the event of a public hearing; and,

(vii) For projects subject to Special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the legal notice (~~shall~~) must (~~either~~) explain the permitting agency's decision or state that an explanation of the decision appears in the fact sheet for the proposed PSD permit.

(3) Notice to the US Environmental Protection Agency Region 10 Regional Administrator.

(d) Extent of public comment period. Unless a public hearing is held, the public comment period (~~shall~~) must be a minimum of thirty days (~~the 30-day period following the date the public notice is first published~~). If a public hearing is held, the public comment period (~~shall~~) must extend through the hearing date and thereafter for such period, if an, as the notice of public hearing may specify.

(e) Public hearings. The applicant, any interested governmental entity, any group, or any person may request a public hearing within the comment period specified in the public notice. Any such request (~~shall~~) must indicate, in writing, the interest of the entity filing it and why a hearing is warranted. The Agency may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing (~~shall~~) will be held upon such notice and at a time and place as the Agency deems reasonable. The Agency (~~shall~~) must provide at least 30 days prior notice of any hearing.

(f) Consideration of public comments. No final decision on any NOC application (~~shall~~) can be made until all public comment periods have ended and any comments received in accordance with requirements for public comments under Rule 6.1.3 have been considered.

(g) 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 rule (e.g., SEPA). This rule does not apply to an application for a "major modification" or an application for a "major stationary source."

(h) Public information. In accordance with Rule 1.6, all information, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70A.~~(94)~~15.~~(205)~~2510, (~~shall~~) must be available for public inspection at the agency. This includes copies of notices of construction applications, orders, and modifications.

**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.

## AMENDATORY SECTION

**Rule 6.1.4 Requirements for Approval**

(a) Attainment or Unclassified area requirements. The following requirements apply to any new stationary source or modification proposed in an attainment or unclassified area:

(1) The proposed new stationary 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 70A.((94))15 RCW and applicable emission standards in ORCAA's Regulations.

(2) The proposed new stationary source or modification will employ BACT for all air pollutants not previously emitted or whose emissions would increase because ((as a result)) of the new stationary source or modification.

(3) Allowable emissions from the proposed new stationary source or modification will 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 ((considered to be)) met if the projected impact of the allowable emissions from the proposed new stationary source or the projected impact of the increase in allowable emissions from the proposed modification at any location within a non-attainment area does not exceed the levels listed in the following table for the pollutants for which the area has been designated nonattainment:

**Table 6.1.b Insignificant Impact Thresholds**

| Pollutant         | Annual Average              | 24-hour Average             | 8-hour Average        | 3-hour Average         | 1-hour Average         |
|-------------------|-----------------------------|-----------------------------|-----------------------|------------------------|------------------------|
| CO                | -                           | -                           | 0.5 mg/m <sup>3</sup> | -                      | 2.0 mg/m <sup>3</sup>  |
| SO <sub>2</sub>   | 1.0 µg/m <sup>3</sup>       | 5.0 µg/m <sup>3</sup>       | -                     | 25.0 µg/m <sup>3</sup> | 30.0 µg/m <sup>3</sup> |
| PM <sub>10</sub>  | 1.0 µg/m <sup>3</sup>       | 5.0 µg/m <sup>3</sup>       | -                     | -                      | -                      |
| PM <sub>2.5</sub> | <u>0.3 µg/m<sup>3</sup></u> | <u>1.2 µg/m<sup>3</sup></u> | -                     | -                      | -                      |
| NO <sub>2</sub>   | 1.0 µg/m <sup>3</sup>       | -                           | -                     | -                      | -                      |

An offsetting emission reduction may be used to satisfy some or all ((of the)) requirements of this rule.

(4) If the proposed project is subject to WAC 173-400((-141))700 through 750 or WAC 173-400-800 through 860, Ecology has issued a final ((PSD)) permit under those programs.

(5) If the proposed new stationary source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the stationary source meets all applicable requirements of that program.

(b) Nonattainment area requirements. The following requirements apply to any new stationary source or modification proposed in a non-attainment area:

(1) The proposed new stationary 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 70A.((94))15 RCW and applicable emission standards in ORCAA's Regulations.

(2) The proposed new stationary source or modification will employ BACT for all air contaminants, except that if the new stationary 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 stationary source or modification is major.

(3) The proposed new stationary 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 Standard Operating Procedures and will comply with Rule 6.1.4 (a) (3) for all air contaminants for which the area has not been designated nonattainment.

(4) If the proposed new stationary 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 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~~) because of its location, construction, or modification.

(5) If the proposed new stationary source or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions from the proposed new stationary source or modification of that air contaminant are offset by reductions in actual emissions from existing 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 stationary 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:

(i) The proposed new level of allowable emissions of the source or emissions unit(s) providing the reduction must be less than the current level of actual emissions of that source or emissions unit(s). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the source or emissions 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 SIP, cannot be credited.

(ii) The emission reductions must provide for a net air quality benefit. For marginal ozone nonattainment areas, the total emission of volatile organic compounds or total emissions of nitrogen oxides are reduced by a ratio of 1.1 to 1 for the area in which the new stationary source or modification is located. For any other nonattainment area, the emissions offsets must provide a positive net air quality benefit in the nonattainment area. Determinations on whether emissions offsets provide a positive net air quality benefit will be made in accordance with the guidelines contained in 40 CFR 51 Appendix S (in effect on July 1, 2000).

(iii) 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 stationary source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some, or all, of the offset requirements of this rule.

(6) If the proposed new stationary source is a major stationary source or the proposed modification is a major modification, the owner or operator 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 persons) 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.

(7) If the proposed new stationary source or modification is subject to WAC 173-400-~~((141))~~700 through 750 and WAC 173-400-800 through 860, Ecology has issued a final ((PSD)) permit under these programs. ~~((for all air contaminants subject to permitting under WAC 173-400-141.))~~

(8) If the proposed new stationary source or modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, the source meets all applicable requirements of that chapter.

(9) If the proposed new stationary source is a major stationary source within the meaning of WAC 173-400-~~((113(1)))~~710 or 810, or the proposed modification is a major modification within the meaning of WAC 173-400-~~((113(1)))~~710 or 810, the project meets the special protection requirements for federal Class I areas in WAC 173-400-117.

**Reviser's note:** The typographical 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.

## AMENDATORY SECTION

### **Rule 6.1.5 Notice of Completion—Order of Violation**

(a) The owner or applicant ~~((shall))~~ must notify the Agency of the completion of construction, installation, establishment, or modification of a stationary source approved through an NOC application and, in the case of a new stationary source, the date upon which operation will commence. The Agency may inspect the new or modified stationary source and may issue an Order of Violation if it is found that it is not in accord with the approved NOC application or Order of Approval.

(b) Upon receipt of an Order of Violation, the owner may appeal the order in accordance with the provisions and procedures in Rule 1.8 and Rule 2.1 of these Regulations.

(c) The issuance of approval as provided by Rule 6.1.2(e) ~~((shall))~~ does not relieve the owner of the obligation to comply with the laws or regulations as adopted by this Agency or prevent the Board or ~~((Control Officer))~~ Executive Director from issuing violation notices as provided by Rule 1.5~~((-))~~(b).

## AMENDATORY SECTION

### **Rule 6.1.6 Time Limit on Approval of Construction**

Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The Agency may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. 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.

**Reviser's note:** The typographical 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.

## AMENDED SECTION

**Rule 6.1.7 ~~RESERVED~~ ((Temporary Portable Sources**

~~(a) Notice of Intent to Operate. The owner or operator of the following sources shall notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NOI) in accordance with Rule 6.1.1:~~

~~(1) Relocation of temporary portable stationary sources that have a valid Order of Approval from Ecology or an air pollution control authority in the State of Washington; and,~~

~~(2) Nonroad engines, provided that the regulation of nonroad engines under this rule are subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 - State Regulation of Nonroad Internal Combustion Engines.~~

~~(b) Requirements for Operation. Sources subject to Rule 6.1.7(a) shall meet the following requirements:~~

~~(1) The operation shall not cause a violation of ambient air quality standards;~~

~~(2) If the operation is in a nonattainment area, it shall not interfere with the scheduled attainment of ambient standards;~~

~~(3) The temporary portable source shall operate in compliance with all applicable air pollution rules and regulations;~~

~~(4) A temporary portable source that is considered a major stationary source within the meaning of Rule 1.4 shall also comply with the requirements in WAC 173-400-141 and Rule 6.1.4(b) as applicable;~~

~~(5) Any operating condition in an Order previously issued to a temporary portable source shall remain in effect upon relocating the source within ORCAA's jurisdiction unless specifically superseded by condition in a subsequent Order;~~

~~(6) Operation of nonroad engines shall not exceed 90 operating days in any calendar year anywhere within ORCAA's jurisdiction unless a regulatory Order has been issued by the Agency. The Agency may set specific conditions for operating during that time period as are reasonably necessary to assure compliance with applicable air pollution control requirements. For purposes of this rule, an operating day shall be considered any time equipment operates within a calendar day.)~~

**AMENDATORY SECTION****Rule 6.1.8 Conditions in Orders of Approval ((Orders)) Enforceable**

Failure to comply with any term or condition of an Order of Approval ((~~Order~~)) constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.((94))15.((430))3150 and RCW 70A.((94))15.((431))3160.

**AMENDATORY SECTION****Rule 6.1.9 Work Done Without Approval**

~~((a))~~ Where work, for which a Notice of Construction is required, is commenced, or performed prior to making application and receiving approval, the ~~((Control Officer))~~ Executive Director or an authorized agent may ~~((conduct an))~~ investigate~~((ion))~~ as part of the Notice of Construction review. In such a case, an investigation fee, in addition to the fees of Rule 3.3 ~~((shall))~~ may be assessed in an amount ~~((equal))~~ up to 3 times the fees required of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

~~((b) Where work for which a Notice of Intent to Operate is required is commenced prior to making application and receiving approval, the Control Officer or an authorized agent, may conduct an investigation as part of the Notice of Intent review. In such a case, an investigation fee, in addition to fees of Rule 3.3, shall be assessed in an amount equal to 3 times the Portable Air Contaminant Source fees of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.))~~

#### AMENDATORY SECTION

##### **Rule 6.1.10 Requirements for Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source**

(a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source ~~((shall))~~ must file a Notice of Construction (NOC) application with the Agency. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or similar parts replacement.

(b) For projects not otherwise reviewable under Rule 6.1 (a) (1) or Rule 6.1 (a) (2), the Agency may:

- (1) Require that the owner or operator employ RACT on the affected stationary source;
- (2) Prescribe reasonable operation and maintenance conditions for the control equipment; and,
- (3) Prescribe other requirements as authorized by chapter 70A. ~~((94))~~ 15 RCW.

(c) Within 30 days of receipt of a Notice of Construction application under this rule the Agency ~~((shall either))~~ will 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. Within thirty days of receipt of a complete NOC application under this rule the Agency ~~((shall either))~~ will issue an order of approval or a proposed RACT determination for the proposed project.

(d) Construction ~~((shall))~~ must not commence on a project subject to review under this rule until the Agency issues a final order of approval. However, any NOC application filed under this rule ~~((shall))~~ will be deemed to be approved without conditions if the Agency takes no action within 30 days of receipt of a complete NOC application.

(e) Approval to replace or substantially alter emission control technology ~~((shall))~~ will become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Agency may extend the 18-month period upon satisfactory showing that an extension is justified. This provision does not apply to the period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

#### AMENDATORY SECTION

##### **Rule 6.1.11 Change of Conditions**

(a) The owner or operator of a stationary source may request, at any time, a change in conditions of an approval order issued by the Agency and the Agency may approve the request provided the Agency finds that:

(1) The change in conditions will not cause the source to exceed an emissions standard;

(2) No ambient air quality standard or PSD increment will be exceeded (~~as a result~~) because of the change;

(3) The change will not adversely impact the ability of the Agency to determine compliance with an emissions standard;

(4) The revised order (~~will~~) continues to require BACT, as defined at the time of the original approval, for each new stationary source approved by the order except where the Federal Clean Air Act requires LAER; and

(5) The revised order meets the requirements of Rule 6.1, as applicable.

(6) If the order was issued under WAC 173-400-~~(141)~~700 through 750 or WAC 173-400-800 through 860, the revised order will meet any applicable requirements of (~~that~~) those sections.

(b) Actions taken under this rule are subject to the public involvement provisions of Rule 6.1.3.

(c) Requests (~~shall~~) must be made on forms provided by the Agency and (~~shall~~) must follow the procedures and timelines for an NOC application as specified in Rule 6.1. The fee schedule found in Rule 3.3 (~~shall~~) also appl(~~y~~)ies to these requests.

~~(e)~~ (d) Changes involving construction, installation or establishment of a stationary source or modification of an existing source require approval under Rule 6.1(a).

## AMENDATORY SECTION

### Rule 6.1.12 Voluntary Limits on Emissions

(a) Upon request by the owner or operator of a source, the Agency (~~shall~~) will issue a regulatory order that limits the source's potential to emit any air contaminant or contaminants to a level agreed to by the owner or operator and the Agency.

(b) A condition contained in an order issued under this rule (~~shall~~) must be less than the source's otherwise allowable annual emissions of a particular contaminant under all applicable requirements of the chapter 70A.~~(94)~~15 RCW and the FCAA, including Washington State Implementation Plan. The term "condition" refers to limits on production or other limitations, in addition to emissions limitation.

(c) Any order issued under this rule (~~shall~~) must include monitoring, record keeping and reporting requirements (~~sufficient~~) to ensure that the source complies with any condition established under this rule. Monitoring requirements (~~shall~~) must use terms, test methods, units, averaging periods, and other statistical conventions consistent with the requirements of WAC 173-400-105.

(d) Any order issued under this rule (~~shall be~~) is subject to the notice and comment procedures under Rule 6.1.3.

(e) The terms and conditions of a regulatory order issued under this rule (~~shall be~~) are federally enforceable (~~r~~) upon approval of this rule as an element of the Washington State Implementation Plan. Any proposed deviation from a condition contained in an order issued under this rule (~~shall~~) requires revision or revocation of the order.

**AMENDATORY SECTION****RULE 6.2 OUTDOOR BURNING**

To help maintain air quality at desirable levels, ~~((±))~~ it is the policy of ~~((the Olympic Region Clean Air agency ()))~~ ORCAA ~~((to achieve and maintain high levels of air quality, and ,))~~ to ~~((this end,))~~ minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the Board ~~((does hereby))~~ declares that such fires should be allowed only on a limited basis under strict regulation and close control. ~~((It is the further policy of ±))~~ The Board ~~((±))~~ also encourages the fostering and development of an alternate technology or method of disposing of natural vegetation, which is reasonably economical and less harmful to the environment.

**AMENDATORY SECTION****Rule 6.2.2 Definitions**

When used in this Rule the following definitions ~~((shall))~~ apply:

**"Agricultural burning"** means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, or ~~((where))~~ identified as a best management practice by the agricultural burning practices and research task force established in RCW 70A. ~~((94))~~ 15. ~~((6528))~~ 5090 or other authoritative source on agricultural practices. Propane flaming ~~((for the purpose))~~ of vegetative debris ~~((removal))~~ is considered commercial agricultural burning.

**"Air Pollution Episode"** means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in chapter 173-435 WAC.

**"Burn ban"** means an "air pollution episode", or a period of "impaired air quality" as defined in RCW 70A. ~~((94))~~ 15. ~~((473))~~ 3580.

**"Extinguish"** means to put out a fire completely. It must be cool to the touch and not smoldering or smoking.

**"Firewood"** means clean, dry, seasoned, untreated wood used as fuel in a ~~((n-Indian))~~ Native American ceremonial fire or recreational fire.

**"Land Clearing Burning"** means outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used ~~((for a))~~ differently ~~((purpose)),~~ or left unused).

**"Outdoor Burning"** means the combustion of material in an open fire or in an open container, without providing for the control of combustion or the control of the emissions from the combustion.

**"Nuisance"** means an emission that unreasonably interferes with the use and enjoyment of property.

**"Recreational Fire"** means cooking fires or campfires using firewood which occur in designated areas on public lands, or on private property. Fires used for disposal ~~((purposes))~~ are not recreational fires.

**"Residential Burning"** means the outdoor burning of leaves, clippings, prunings, and other yard and gardening refuse originating on the maintained area of residential property (i.e., lands immediately adjacent and ~~((in close proximity to))~~ near a human dwelling) and burned on such lands by the property owner and/or another responsible person.

**"Urban Growth Area"** (UGA) means land, generally including land associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.110.

**AMENDATORY SECTION**

**Rule 6.2.3 No ~~((residential or land clearing burning is allowed in the following cities and/ or UGAs))~~ Burn Areas:**

No residential or land clearing burning is allowed in the following cities and/or UGAs:

| Clallam   | Grays Harbor        | Jefferson                                 | Mason                       | Pacific  | Thurston   |
|---|---------------------|---|-----------------------------|--|--|
| Carlsborg<br>Clallam Bay<br>Forks<br>Joyce<br>Port Angeles<br>Sekiu<br>Sequim | Aberdeen<br>Hoquiam | Port Townsend<br>Irondale<br>Port Hadlock | Allyn<br>Belfair<br>Shelton | Ilwaco<br>Long Beach<br>Raymond<br>Seaview<br>South Bend | Bucoda<br>Grand Mound<br>Lacey<br>Olympia<br>Rainier<br>Tenino<br>Tumwater<br>Yelm |

**AMENDATORY SECTION**

**Rule 6.2.5 Prohibitions and restrictions ~~((WAC 173-425-050))~~**

(a) It ~~((shall be))~~ is unlawful for any person to cause or allow an outdoor fire containing prohibited materials which include but are not limited to garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper, cardboard, treated wood, processed wood, construction/demolition debris, metal, or any substance which when burned releases toxic emissions, dense smoke, or obnoxious odors. A limited amount of paper may be used to start the fire. ORCAA may allow the limited burning of prohibited materials for fire training.

(b) It is illegal to burn vegetation originating in any area where burning is prohibited as listed in Rule 6.2.3.

(c) A person capable of extinguishing the fire must ~~((be in attendance))~~ attend it at all times, and the fire must be extinguished before leaving it.

(d) Containers (not regulated under WAC 173-400-070(1)) used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half inch.

(e) The use of burn barrels is illegal.

(f) A fire protection agency, county, conservation district, or other governing body may enforce its own regulations that are stricter than those set forth in this rule.

(g) It ~~((shall be))~~ is unlawful for any person to cause or allow an emission from outdoor burning that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

**AMENDATORY SECTION**

**Rule 6.2.6 Curtailment ~~((WAC 173-425-050))~~**

(a) No outdoor fire ~~((shall be))~~ can be ignited in a geographical area where an impaired air quality or episode ~~((burn ban))~~ has been declared.

(b) The person responsible for an outdoor fire must extinguish the fire when a burn ban is declared.

(c) Three (3) hours after a burn ban is declared smoke visible from all types of outdoor burning, except land clearing burning, ~~((will))~~ constitutes prima facie evidence of unlawful outdoor burning.

(d) Eight (8) hours after a burn ban is declared smoke visible from land clearing burning (~~(will)~~) constitutes prima facie evidence of unlawful outdoor burning.

#### AMENDATORY SECTION

##### **Rule 6.2.7 Recreational Burning**

The following burn practices (~~(shall)~~) must be used for recreational burning where allowed.

(a) Maximum pile size is three (3) feet in diameter and two (2) feet high. (~~(WAC 173-425-060)~~)

(b) Only dry, seasoned firewood or charcoal and enough clean paper necessary to start a fire may be burned.

(c) No recreational fires are allowed within the city limits of Lacey, Olympia, and Tumwater, and unincorporated areas of Thurston County lying within or between the municipal boundaries of these cities. Charcoal, propane, or natural gas may be used without a permit.

#### AMENDATORY SECTION

##### **Rule 6.2.8 Permit Program**

ORCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for (~~(particular)~~) specific types of burning. Permitting agencies may use, as appropriate, a verbal, electronic, written, or general permit established by rule, for any type of burning that requires a permit.

(a) Permitting agencies may deny an application or revoke a previously issued permit if it is determined that the application contained inaccurate information, failed to contain pertinent information or the permitted activity has caused a nuisance.

(b) Failure to comply with any term or condition of a permit constitutes a violation of this rule and is subject to penalties pursuant to RCW 70A.~~(94)~~15.~~(430)~~3150 and RCW 70A.~~(94)~~15.~~(431)~~3160.

(c) Types of burning that require a written permit.

(1) Agricultural burning (~~(shall)~~) must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(2) Fire training fires, except as provided in RCW 52.12.150, may be conducted provided all (~~(of)~~) the following requirements are met:

(i) Fire training (~~(shall)~~) must not occur during a burn ban.

(ii) The fire must be for training (~~(purposes)~~).

(iii) The agency conducting the training fire (~~(shall)~~) must obtain any permits, licenses, or other approvals required by any entity for such training fires. All permits, licenses, and approvals must be kept on-site and available for inspection.

(3) Native American ceremonial fires within the city limits of Olympia, Lacey, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

(4) Land Clearing Burning (~~(shall)~~) requires an approved written permit. (~~(abide by Rule 6.2 and all e)~~) Conditions of the written permit issued by ORCAA or another permitting agency are enforceable.

(5) Storm and flood debris resulting from a declared emergency by a governmental authority may be burned within two years of the event (storm). Burning (~~(shall)~~) must abide by Rule 6.2 and all conditions of the written permit issued by ORCAA or another permitting agency.

(6) Weed abatement fires.

(7) Residential fires in Thurston County.

The permit application for the above permits ~~((shall))~~ must be accompanied by the applicable fee, pursuant to Rule 3.4.

(d) Where residential burning is allowed and no written burn permits are issued, burning ~~((shall))~~ must abide by Rule 6.2 and the following:

(1) Maximum pile size is four (4) feet in diameter and three (3) feet high.

(2) Only one pile ~~((shall))~~ may be burned at a time, and each pile must be extinguished before lighting another.

(3) Only natural vegetation may be burned.

(4) No fires are to be within fifty (50) feet of structures or within five hundred (500) feet of forest slash.

(5) No tree stumps may be burned.

## AMENDATORY SECTION

### RULE 6.3 ASBESTOS

The Board of Directors of the ORCAA (~~(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, t))~~ 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:

**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.

**(-)~~Control Officer~~ 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)~~ Executive Director, or designee, to determine whether materials or ~~(structures)~~ buildings 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)~~ during demolition, renovation, or disposal.

**HEPA Filter** - A High Efficiency Particulate Air filter found in some respirators and vacuum systems. HEPA filters must be 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)~~ other forces expected to act on the materials ~~(in the course of)~~ during 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.))~~ such as apartments, duplexes, condominiums, 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.

**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.

## AMENDATORY SECTION

### 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~~) must 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~~) must be available at the work site and communicated to all persons who may (~~come into contact with~~) encounter the material.

(2) If there are no suspect materials in the work area, this determination (~~shall~~) must 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~~) is 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~~) must be available at the work site and communicated to all persons who may (~~come into contact with~~) encounter the material.

## AMENDATORY SECTION

### Rule 6.3.3 Controlled and Regulated Substances

- (a) ~~((No person shall))~~ It is unlawful to 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 Notification Requirements**

(a) It ~~((shall be))~~ is 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))~~ Executive Director, 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) Per Rule 3.5, (( $\Phi$ ))the appropriate nonrefundable fee must accompany 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))~~ must 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 same contractor will perform 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**

| Project                      | Notification Period                              |
|------------------------------|--|
| Asbestos                     | 10 days prior to commencement of work on project |
| Asbestos-NESHAP <sup>1</sup> | 14 days prior to commencement of work on project |
| Asbestos Project Amendments  | Prior Notice                                     |
| Demolition                   | 14 days prior to commencement of work on project |

| Project   | Notification Period |
|-----------|---------------------|
| Emergency | Prior Notice        |

1 Projects subject to 40 CFR Part 61 Subpart M must comply with the 14-day notification period.

(1) The duration of an asbestos project (~~(shall)~~) must not exceed one year from date of submission of the original notification.

(2) The (~~Control Officer~~) Executive Director, 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.

**AMENDATORY SECTION**

**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)~~) must 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)~~) is 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~~) Executive Director, or designee, on ORCAA-approved forms within 15 days after the end of each calendar quarter.

**AMENDATORY SECTION**

**Rule 6.3.6 Asbestos Project Amendments**

(a) The original applicant will submit ((A)) an amendment ((shall be submitted by the original applicant,)) on or before the completion date on file to the ((Control Officer)) Executive Director, 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.

**AMENDATORY SECTION**

**Rule 6.3.7 Emergencies—Exceptions to Advance Notification Period**

(a) The (~~Control Officer~~) Executive Director, or designee, may waive the advance notification period, if the property owner or agent submits a written request that demonstrates to the (~~Control Officer~~) Executive Director, 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.

#### AMENDATORY 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~~) is 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~~) Executive Director, 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.

#### AMENDATORY SECTION

##### **Rule 6.3.9 Procedures for Asbestos Projects**

(a) Training Requirements. It (~~shall be~~) is 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~~) is unlawful for any person to cause or allow the removal of ACM unless all the following requirements are met:

- (1) The asbestos project (~~shall~~) must be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area (~~shall~~) must be restricted to authorized personnel only.
- (2) If a negative pressure enclosure is employed it (~~shall~~) must be equipped with transparent viewing ports, if feasible, and (~~shall~~) must be maintained in good working order. Emissions from the negative air exhaust (~~shall~~) must be controlled by a HEPA filter.
- (3) Absorbent ACM, such as surfacing material and thermal system insulation, (~~shall~~) must be saturated with a liquid wetting agent prior to removal. Any unsaturated absorbent ACM exposed during removal (~~shall~~) must be immediately saturated with a liquid wetting agent. All absorbent asbestos-containing waste material (~~shall~~) must be kept saturated with a liquid wetting agent until sealed in leak-tight

containers. All asbestos-containing waste material (~~(shall)~~) must 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)~~) must 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)~~) must be immediately coated with a liquid wetting agent. All nonabsorbent asbestos-containing waste material (~~(shall)~~) must 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)~~) must 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)~~) must 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)~~) It is unlawful to allow visible asbestos emission (~~(shall result)~~) from an asbestos project. Leak-tight containers (~~(shall)~~) must not be dropped, thrown, slid, or otherwise damaged.

(9) The asbestos-containing waste material (~~(shall)~~) must be stored in a controlled area until transported to an approved waste disposal site.

(10) It (~~(shall be)~~) is unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of ACM. Such unlawful activity includes, but is not limited to: N(~~(e.g. a)~~)ot removing all ACM in a structure scheduled for demolition; (~~(or)~~) partially removing ACM and leaving remaining ACM in a state (~~(that)~~) mak(~~(es)~~)ing it more susceptible to being disturbed; (~~(r)~~) or, leaving it on the ground, outside and open to the environment (~~(+)~~).

#### AMENDATORY 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)~~) Executive Director, or designee, and all the following conditions are met:

(1) Accumulated asbestos-containing waste material (~~(shall)~~) must 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)~~) must be stored in leak-tight containers and the leak-tight containers (~~(shall)~~) must 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~~) must not exceed 90 days.

(c) Disposal of Asbestos Cement Pipe. Asbestos cement water pipe used on a public right-of-way(~~s~~) or public easement(~~s shall be~~) is 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~~) will be subject to the requirements of Rule 6.3.

#### AMENDATORY 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 (EPA), the Occupational Safety and Health Administration (OSHA), and the Department of Labor and Industries. Nothing in the Agency's rules (~~shall be construed as~~) excuse(~~ing~~) any person from complying with any other applicable local, state, or federal requirement.

#### NEW SECTION

##### **RULE 6.4 NOTICE OF INTENT TO OPERATE**

(a) A Notice of Intent to Operate may be filed with the Agency in lieu of a Notice of Construction for the following sources:

(1) Temporary Portable Stationary Sources. Relocation of temporary portable stationary sources having a valid Order of Approval from Ecology or a local air pollution control agency in the State of Washington.

(2) Stationary Sources based on Potential to Emit. Any stationary source that will have a combined uncontrolled potential to emit from all emission units less than:

(i) 0.5 tons per year of any criteria pollutant; and,

(ii) 1.0 tons per year of total criteria pollutants and VOC combined; and,

(iii) 0.005 tons per year of lead; and,

(iv) The de minimis emission rate specified for each Toxic Air Pollutant listed in WAC 173-460-150; and,

(v) 1.0 tons per year of ozone depleting substances combined.

(3) Gasoline Dispensing Facilities (GDF). Construction or modification of a gasoline dispensing facility, or replacement or substantial alteration of vapor recovery systems, provided that:

(i) The installed equipment is in accordance with the current California Air Resources Board (CARB) Executive Orders as defined in Rule 8.12 listed on the GDF Notification form effective at the time of the filing;

(ii) The GDF is not part of a stationary source subject to the Air Operating Program (Rule 5);

(iii) The GDF is not subject to any of the Stage II requirements in WAC 173-491-040(5); and

(iv) The project does not involve the removal of a Stage II vapor recovery system.

(b) A Notice of Intent to Operate must be filed with the agency for nonroad engines (as defined in WAC 173-400-035) as required by WAC 173-400-035.

(c) A complete Notice of Intent to Operate (NOI) application must be filed at least 15 days prior to starting operation of the source.

(d) NOI applications will be made on standard forms of the Agency and will 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 6.4 (a)(2), documentation verifying the stationary source's potential to emit;

(3) If submitting a NOI for a nonroad engine, the notice must include all the information required by WAC 173-400-035 (4) or (5), as applicable;

(4) Any additional information requested by the Agency to verify that operation of the stationary source will comply with applicable air pollution control requirements; and,

(5) Applicable fee per Rule 3.6.

(e) Condition of operation. The Agency may establish enforceable conditions of operation, through issuance of a regulatory Order, as are necessary to assure compliance with applicable air pollution control requirements.

(f) Temporary Portable Stationary Sources - Requirements for Operation. Sources submitting a Notice of Intent per Rule 6.4 (a)(1) must meet the following requirements:

(1) The operation must not cause a violation of ambient air quality standards;

(2) If the operation is in a nonattainment area, it must not interfere with the scheduled attainment of ambient standards;

(3) The temporary source must operate in compliance with all applicable air pollution rules and regulations;

(4) A temporary portable stationary source that is considered a major stationary source within the meaning of WAC 173-400-710 or WAC 173-400-810 must also comply with the requirements in WAC 173-400-700 through 750 and WAC 173-400-800 through 860 and Rule 6.1.3(b) as applicable;

(5) Any operating condition in an Order previously issued to a temporary source will remain in effect upon relocating the source within ORCAA's jurisdiction unless specifically superseded by condition in a subsequent Order.

(g) Where work, for which a Notice of Intent to Operate is required, is commenced prior to making application and receiving approval, the Executive Director, or an authorized agent, may investigate as part of the Notice of Intent review. In such a case, an investigation fee, in addition to fees of Rule 3.3, may be assessed in an amount up to 3 times the Notice of Intent fees of Rule 3.3. Payment of the fees does not relieve any person from the requirement to comply with the regulations nor from any penalties for failure to comply.

## **AMENDATORY SECTION**

### **RULE 7.1 INTERFERENCE OR OBSTRUCTION**

It is unlawful for any ~~((No))~~ person ~~((shall))~~ to willfully interfere with or obstruct the ~~((Control Officer))~~ Executive Director or any Agency employee in performing any lawful duty.

#### AMENDATORY SECTION

##### RULE 7.2 FALSE OR MISLEADING STATEMENTS

It is unlawful for any ~~((No))~~ person ~~((shall))~~ to willfully make a false or misleading statement to the Board or its representative as to any matter within the jurisdiction of the Board.

#### AMENDATORY SECTION

##### RULE 7.3 UNLAWFUL REPRODUCTION OR ALTERATION OF DOCUMENTS

It is unlawful for any ~~((No))~~ person ~~((shall))~~ to reproduce or alter, or cause to be reproduced or altered, any order, registration certificate or other paper issued by the Agency if the purpose of such reproduction or alteration is to evade or violate any provision of these Regulations or any other law.

#### AMENDATORY SECTION

##### RULE 7.4 DISPLAY OF ORDERS AND CERTIFICATES: REMOVAL OR MUTILATION PROHIBITED

(a) Any order or registration certificate required to be obtained by these Regulations ~~((shall))~~ must be available on the premises designated on the order or certificate.

(b) ~~((In the event that))~~ If the Agency requires an order or registration certificate to be displayed, it ~~((shall))~~ must be posted.

(c) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to mutilate, obstruct or remove any order or registration certificate unless authorized to do so by the Board or the ~~((Control Officer))~~ Executive Director.

#### AMENDATORY SECTION

##### RULE 7.5 EMISSION OF AIR CONTAMINANT—CONCEALMENT AND MASKING

~~((WAC 173-400-040))~~

(a) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the installation or use of any device or use of any means, which conceals or masks an emission of air contaminant, which would otherwise violate any provisions of ORCAA's Regulations or chapter 173-400 WAC.

(b) It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the installation or use of any device or use of any means designed to conceal or mask the emission of an air contaminant, which causes detriment to health, safety, or welfare of any person, or cause damage to property or business.

#### AMENDATORY SECTION

##### RULE 7.6 EMISSIONS OF AIR CONTAMINANT OR WATER VAPOR: DETRIMENT TO PERSONS AND/OR PROPERTY

It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the emission of an air contaminant or water vapor, including an air contaminant whose emission is not otherwise prohibited by these Regulations, if the air contaminant or water vapor causes detriment to the health, safety, or welfare of any person, or causes damage to property or business.

#### AMENDATORY SECTION

##### Rule 8.1.1 Definitions

"Adequate Source of Heat" means a furnace or heating system, connected, or disconnected from its energy source, designed with the

ability to maintain seventy degrees Fahrenheit (70°F) at a point three (3) feet above the floor in all normally inhabited areas of a dwelling. Garages are specifically excluded.

**"Certified"** means that a woodstove meets emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified by EPA in 40 CFR Part 60 Subpart AAA-Standards of Performance for Residential Wood Heaters as amended through July 1, 1990.

**"Cook Stove"** means an appliance designed with the primary function of cooking food and containing an integrally built-in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan, and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room (~~shall~~) is not (~~be~~) considered a cook stove.

**"Fireplace"** means a permanently installed masonry fireplace; or a factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

**"First Stage of Impaired Air Quality"** means the same as Stage 1 burn ban and is declared when meteorological conditions are predicted to cause fine particulate levels to exceed 35 micrograms per cubic meter measured on a 24-hour average, within 48 hours.

**"Second Stage of Impaired Air Quality"** means the same as Stage 2 burn ban and is declared when a first stage of impaired air quality has been in force and has not been sufficient to reduce the increasing fine particulate pollution trend (~~(RCW 70.94.473)~~). A second stage burn ban may be called without calling a first stage burn ban only when all (~~of~~) the following occur (~~(RCW 70.94.473 (c)(ii))~~):

(a) Fine particulate levels have reached or exceeded 25 micrograms per cubic meter, measured on a 24-hour average(~~);~~ ;

(b) Meteorological conditions have caused fine particulate levels to rise rapidly;

(c) Meteorological conditions are predicted to cause fine particulate levels to exceed the 35 micrograms per cubic meter, measured on a 24-hour average, within 24 hours; and,

(d) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.

**"Nonaffected Pellet Stove"** means that a pellet stove has an air-to-fuel ratio equal to or greater than 35.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in 40 CFR Part 60 Appendix A, Reference Method 28A-Measurement of Air to Fuel Ratio and minimum achievable burn rates for wood fired appliances as amended through July 1, 1990.

**"Salt Laden Wood"** means any species of wood that has been soaked in salt water.

**"Seasoned Wood"** means clean, untreated wood of any species that has been (~~sufficiently~~) dried (~~so as to~~) and contains twenty percent (20%) or less moisture by weight.

**"Solid Fuel Burning Device"** means a device that burns seasoned wood, coal, or any other nongaseous or nonliquid fuels except those prohibited by Rule 8.1.3. This also includes devices used for aesthetic or a space heating purpose, which has (~~a~~) heat input less than one million British thermal units per hour. A cook stove is specifically excluded from this definition.

"**Treated Wood**" mean wood of any species that has been chemically impregnated, painted, or similarly modified to improve structural qualities or resistance to weathering or deterioration.

"**Woodstove**" means an enclosed solid fuel burning device capable of and intended for space heating and/or domestic water heating.

#### AMENDATORY SECTION

##### **Rule 8.1.2 General Emission Standards**

(a) It is unlawful for any (~~(No)~~) person (~~((shall))~~) to cause or allow an emission from a solid fuel burning device that unreasonably interferes with the use and enjoyment of property or workplace.

(b) It is unlawful for any (~~(No)~~) person (~~((shall))~~) to cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent (20%) opacity as determined by EPA Method 9. The provision of this requirement (~~((shall))~~) will not apply during the starting of a new fire for a period not to exceed 20 minutes in any 4-hour period.

(c) Smoke visible from a chimney, flue, or exhaust duct, in excess of the opacity standard (~~((shall))~~) will constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device.

#### AMENDATORY SECTION

##### **Rule 8.1.3 Prohibited Fuel Types**

It is unlawful for any ((A)) person (~~((shall not))~~) to cause or allow any of the following materials to be burned in a solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastic products;
- (d) Rubber products;
- (e) Animals;
- (f) Asphalt products;
- (g) Petroleum products;
- (h) Paints and chemicals;
- (i) Salt laden wood; or
- (j) Any substance that normally emits dense smoke or obnoxious odors.

#### AMENDATORY SECTION

##### **Rule 8.1.4 Curtailment**

(a) Whenever the Agency has declared a Stage 1 burn ban for a geographic area, a person within that geographic area with an adequate source of heat other than a solid fuel burning device (~~((shall))~~) must not operate any solid fuel burning device, unless the solid fuel burning device is one of the following:

- (1) Certified; or
- (2) A nonaffected pellet stove.

(b) Whenever the Agency has declared a Stage 2 burn ban for a geographic area, a person within that geographical area with an adequate source of heat other than a solid fuel burning device (~~((shall))~~) must not operate any solid fuel burning device.

(c) The affected geographic area of a declared Impaired Air Quality (~~((shall))~~) will be determined by the Executive Director or their designee.

(d) A person responsible for an applicable solid fuel burning device already in operation at the time Impaired Air Quality is declared (~~shall~~) must withhold new solid fuel for the duration of the Impaired Air Quality. Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of the Impaired Air Quality (~~shall~~) will constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(e) For the sole purpose of a contingency measure to meet the requirements of Section 172 (c) (9) of the Federal Clean Air Act, the use of solid fuel burning devices, except fireplaces as defined in RCW 70A. (~~94~~) 15. (~~453~~) 3510 (3), woodstoves meeting the standards set forth in RCW 70A. (~~94~~) 15. (~~457~~) 3530 or pellet stoves either certified or issued an exemption by the EPA in accordance with Title 40, Part 60 of the Code of Federal Regulations will be prohibited if the EPA, in consultation with Ecology and the Agency, makes written findings that:

(1) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and,

(2) Emissions from solid fuel burning devices from a (~~particular~~) geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

(3) A prohibition issued under 8.1.4(e) (~~shall~~) will not apply to a person that does not have an adequate source of heat without burning wood.

(4) The area is to consist of all areas within the city limits of Lacey, Olympia, and Tumwater and unincorporated areas of Thurston County lying within or between the municipal boundaries.

#### **AMENDATORY SECTION**

##### ***Rule 8.1.5 Exemptions***

Written exemptions granted by the Agency (~~shall be~~) are valid for one (1) year from date of issue. Exemptions may be canceled at any time if the original request is found to be incorrect, inaccurate, or fraudulent. Exemptions (~~shall~~) will apply only to the use of solid fuel burning device during an Impaired Air Quality and not to the other rules of this regulation or other applicable regulations.

(a) Emergency exemption. In an emergency (~~situation~~) the Agency may issue a written solid fuel burning device emergency exemption. An emergency (~~situation shall~~) may include, but is not limited to, a situation where a person demonstrates that their heating system, other than a solid fuel heating device, is inoperable for reasons other than their own actions or a situation where the heating system has been involuntarily disconnected by a utility company or other fuel supplier.

(b) Inadequate heat source. Written exemptions may be issued by the Agency if a person can demonstrate that:

(1) The structure was originally designed with a solid fuel burning device as the source of heat; or

(2) The existing heat source, fueled with other than solid fuel, will not provide adequate heat.

#### **AMENDATORY SECTION**

##### ***Rule 8.1.7 Sale and Installation of Uncertified Woodstoves***

It (~~shall be~~) is unlawful to install, sell, offer for sale, advertise for sale, or otherwise transfer an uncertified solid fuel

burning device unless the device has been rendered permanently inoperable as a combustion device.

#### AMENDATORY SECTION

##### **Rule 8.1.8 Disposal of Uncertified Woodstoves**

~~((At such time as))~~ When an uncertified solid fuel burning device is to be permanently removed from its location it ~~((shall))~~ must be rendered inoperable as a solid fuel burning device. A removed uncertified solid fuel burning device ~~((shall))~~ must not be sold, bartered, traded, or given away for a purpose other than recycling of the materials to form something other than an uncertified solid fuel burning device.

#### AMENDATORY SECTION

##### **RULE 8.2 GENERAL STANDARDS FOR MAXIMUM VISUAL EMISSIONS**

~~((see WAC 173-400-040))~~

All facilities, sources and emissions units are required to meet the visual emission standards of this rule except when a visual emission standard is listed in another rule of these Regulations, or where a Notice of Construction lists a more stringent visual emission standard, or where an applicable State of Washington or Federal Regulation lists a visual emission standard that is more stringent, such standards will take precedent over a general emission standard listed in this rule.

(a) In equipment or facilities, including boilers using hogged fuel, regardless of their date of installation, it is unlawful for any ~~((no))~~ person ~~((shall))~~ to cause or allow the emission to the outdoor atmosphere, for more than three (3) minutes in any one hour, of a gas stream containing air contaminants that are greater than 20% opacity.

(b) Observations ~~((shall))~~ must be made by trained and certified observers or by LIDAR instrumentation.

(c) The exceptions to Rule 8.2 are as follows:

(1) Emission occurring due to soot blowing or grate cleaning may be greater than 20% opacity; providing the operator can demonstrate that soot blowing, or grate cleaning will not exceed a total of 15 minutes in any 8 consecutive hours. This practice, except for testing and trouble~~((-))~~ shooting, is to be scheduled for the same approximate times each day and ORCAA ~~((shall))~~ must be advised of the schedule.

(2) When the owner or operator of a source supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed 20%.

#### AMENDATORY SECTION

##### **RULE 8.3 GENERAL STANDARDS FOR MAXIMUM PARTICULATE MATTER**

~~((see WAC 173-400-040, -050, -060, and -070))~~

All sources and emission units are required to meet the emission standards of this rule, except when a standard is listed in another rule of these Regulations, or where a Notice of Construction Approval Order lists a more stringent standard, or where an applicable State of Washington or Federal Regulation lists a standard that is more stringent, such standards will take precedent over a general emission standard listed in this rule. Further, all existing emission units are required to use reasonably available control technology (RACT), which may be determined for some sources or source categories to be more stringent than the applicable emission limitations of ORCAA Regulations. When current controls are determined to be less than RACT, ORCAA ~~((shall))~~ will, on a case-by-case basis, define RACT for each

source or source category and issue a regulatory order to the source or source category for installation of RACT. Particulate test procedures, on file at the Authority, will be used to determine compliance. The Agency ~~((uthority))~~ requires the inclusion of ~~((the Method 5 back half))~~ condensable particulate matter, for determining compliance with the particulate matter standards in this rule.

**(a)** In equipment or facilities, except boilers using hog fuel, it is unlawful for any ~~((no))~~ person ~~((shall))~~ to cause or allow the emission of particulate matter to the outdoor atmosphere from any single source in excess of 0.10 grains per standard cubic foot of gas (calculated at 7% oxygen). Particulate test procedures, on file at the ~~((Authority))~~ Agency, will be used to determine compliance. ~~((The Authority includes the Method 5 back half condensable particulate matter for determining compliance with particulate matter standards.))~~

**(b)** Hogged Fuel Boilers: It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow the emission of particulate matter to the outdoor atmosphere from any single source in excess of 0.20 grains per standard cubic foot of gas (calculated at 7% oxygen). Particulate test procedures, on file at the ~~((Authority))~~ Agency, will be used to determine compliance. ~~((The Authority includes the Method 5 back half condensable particulate matter for determining compliance with particulate matter standards.))~~

**(c)** Fugitive particulate material. Reasonable and/or appropriate precautions ~~((shall))~~ must be taken to prevent fugitive particulate material from becoming airborne;

**(1)** When handling, loading, unloading, transporting, or storing particulate material; or,

**(2)** When constructing, altering, repairing, or demolishing a building; or its appurtenance; or a road; or,

**(3)** From an untreated open area.

For ~~((the purpose of))~~ this rule, fugitive particulate means particulate material which is generated incidental to an operation, process or procedure and is emitted into the open air from points other than an opening designed for emissions such as stacks or vents.

**(d)** It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow any construction, alteration, repair, maintenance, or demolition work without taking precautions to prevent air pollution.

**(e)** Fallout. It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or permit the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner(s) or operator(s) of the source which interferes unreasonably with the use and enjoyment of the property upon which the material is deposited.

## AMENDATORY SECTION

### RULE 8.4 INCINERATION OPERATION

**(a)** It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow any incineration operation within the ~~((Authority's))~~ Agency's jurisdiction except in an incinerator provided with emission control apparatus found by the ~~((Control Officer))~~ Executive Director, or a duly designated agent, in advance of such use, to be effective for ~~((the purpose of))~~ air pollution control.

**(b)** ~~((Incinerator))~~ Operating Hours. It is unlawful for any ~~((No))~~ person ~~((shall))~~ to cause or allow an incineration operation at any time other than daylight hours of the same day, except with written approval of the ~~((Control Officer))~~ Executive Director.

**AMENDATORY SECTION****RULE 8.5 ODOR CONTROL MEASURES**

(a) Reasonably available control technology (RACT) (~~(shall)~~) must be installed and operated to mitigate odor-bearing gases emitted into the atmosphere to a minimum, or, so as not to create air pollution.

(b) The Board may establish requirements that the building or equipment be enclosed and ventilated in such a way that all the air, gases and particulate matter are effectively treated for removal or destruction of odorous matter or other air contaminants before emission to the outdoor atmosphere.

(c) It is unlawful for any (~~(No)~~) person (~~(shall)~~) to cause or allow the emission or generation of any odor from any source, which unreasonably interferes with another person's use, and enjoyment of their property.

**AMENDATORY SECTION****RULE 8.6 EMISSION OF TOXIC AIR POLLUTANTS**

(a) Sources installed after June 18, 1991, (~~(shall)~~) must meet the requirements of chapter 173-460 WAC, New Sources of Toxic Air Pollutants. For sources installed after June 18, 1991, "Toxic Air Pollutant (TAP)" means any (~~(Class A or Class B)~~) toxic air pollutant listed in WAC 173-460-150 (~~(and/or WAC 173-460-160. 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 and/or WAC 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds)~~).

(b) No person shall cause or allow the emission of formaldehyde into the ambient air beyond such person's property line, which will result in a concentration exceeding .05 ppm (parts per million) 1 hour average or 61 micrograms per cubic meter 1 hour average.

**AMENDATORY SECTION****RULE 8.7 REPORTING OF EXCESS EMISSIONS**

(a) Excess emission (~~(shall)~~) must be reported to the (~~(Authority)~~) Agency as soon as possible and within 24 hours unless the (~~(Authority)~~) Agency has established alternative reporting timeline requirements for the source. Upon request by the (~~(Control Officer)~~) Executive Director, the owner(s), or operator(s), of the source(s) (~~(shall)~~) must submit a full written report including the known causes, the corrective actions taken, and the preventative measures to be taken to minimize or eliminate the chance of recurrence.

(b) The owner or operator of a source (~~(shall)~~) have the burden of proving to the (~~(Authority)~~) Agency that excess emissions were unavoidable.

(c) The following scenarios of excess emissions (~~(shall)~~) will be considered unavoidable:

(1) Excess emissions due to startup or shutdown conditions (~~(shall)~~) will be considered unavoidable provided the source reports as required under Rule 8.7(a) and adequately demonstrates (~~(to the Control Officer that)~~) the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.

(2) Excess emissions due to scheduled maintenance (~~(shall)~~) will be considered unavoidable if the source reports as required under Rule 8.7(a) and could not have been avoided through better design, scheduling for maintenance, or through better operation and maintenance practices.

(3) Excess emissions due to upsets (~~(shall)~~) will be considered unavoidable provided the source reports, as required under Rule 8.7(a), and demonstrates (~~(to the satisfaction of the Authority 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; and

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during and after the event, 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.

## AMENDATORY SECTION

### RULE 8.9 BURNING USED OIL IN LAND BASED FACILITIES

(RCW 70A.((94))15.((610))4510)

(a) Except as provided in Rule 8.9(b), a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

(1) Cadmium - 2 ppm maximum

(2) Chromium - 10 ppm maximum

(3) Lead - 100 ppm maximum

(4) Arsenic - 5 ppm maximum

(5) Total Halogens - 1000 ppm maximum

(6) Polychlorinated Biphenyls - 2 ppm maximum

(7) Ash - .1 percent maximum (0.1%)

(8) Sulfur - 1.0 percent maximum (1%)

(9) Flash point - 100 degrees Fahrenheit minimum (100(~~(F)~~))F

(b) This rule (~~(shall)~~) does not apply to:

(1) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million (~~(Btu's))~~ BTUs per hour or used oil burned in facilities permitted by the (~~(Authority))~~ Agency; or

(2) Ocean going vessels.

(c) This rule (~~(shall)~~) does not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission.

Test procedures for determining compliance for the above specifications (~~(shall)~~) must be approved by the (~~(Authority))~~ Agency.

## AMENDATORY SECTION

### RULE 8.10 FLUORIDES

(a) The following standards (~~(shall)~~) apply to forage:

(1) After sampling (~~(on a))~~ monthly (~~(basis))~~, the yearly average fluoride content of the forage should not exceed 40 ppm Fluoride ion (ppm F), on a dry weight basis, or exceed 60 ppm F for more than two (2) consecutive months or exceed 80 ppm F for more than one (1) month.

(2) In areas where cattle are not grazed continually but are fed cured forage, as hay, for part of the year, the fluoride content of this hay (~~(shall)~~) will be used as it is fed to establish the yearly

average. Computation of the yearly average, ~~((shall))~~ must take into consideration, periods when cattle may have been grazed outside the area.

(3) Inasmuch as the standards set forth in paragraph (1) are intended to protect livestock, all forage samples analyzed to determine compliance with such standards ~~((shall))~~ must be representative of forage ~~((actually))~~ consumed by livestock in the area. Also, in determining compliance in particular cases, consideration ~~((shall))~~ will be given to the supplemental feed of the livestock involved.

(b) The following standards ~~((shall))~~ apply to the outdoor atmosphere:

**Table 8.10a Maximum Allowable Fluoride**

| Maximum Allowable Fluoride*<br>Ground-level Concentrations |                      |
|--|----------------------|
| Concentration**  | Averaging Time       |
| 4.5 ppb  | 12 consecutive hours |
| 3.5 ppb  | 24 consecutive hours |
| 2.0 ppb  | 1 calendar year      |
| 1.0 ppb  | 1 calendar month     |
| * as gaseous fluorides calculated as HF                    |                      |
| ** parts per billion by volume                             |                      |

~~((Inasmuch as))~~ Because the standards set forth in Table 8.10 are intended to protect vegetation, the outdoor atmosphere analyzed to determine compliance with such standards ~~((shall))~~ must be ~~((that existing in))~~ from the area of the vegetation to be protected.

(c) Forage or air quality levels higher than those specified in paragraph (1) and Table 8.10 ~~((shall))~~ will be permitted to exist in an area where justified by local conditions and where such higher levels do not or will not be expected to result in significant adverse effects. Similarly, levels lower than those specified in paragraph (1) and Table 8.10 ~~((shall))~~ will be maintained in ~~((particular))~~ cases where significant adverse effects have occurred or can be expected to occur at the specified levels.

**AMENDATORY SECTION**

**RULE 8.11 RECORD KEEPING AND REPORTING**

~~T((he purpose of t))~~his rule ~~((is to))~~ requires owners or operators of stationary sources of air contaminants to maintain records of, and periodically report to the Olympic Region Clean Air Agency information on the nature and amounts of emissions and other information as may be necessary to determine whether such sources are in compliance with applicable emission limitations and other control measures.

This rule also provides for public availability of emission data reported to the Olympic Region Clean Air Agency by stationary source owners or operators or otherwise obtained by the ~~((Authority))~~ Agency, as correlated with applicable emission limitations.

(a) The owner or operator of any stationary source in the geographical area of the Authority ~~((shall))~~ must, upon notification by the ~~((Control Officer))~~ Executive Director ~~((of the Olympic Region Clean Air Agency))~~, maintain records of the nature and amounts of emissions from such source and/or provide other information deemed necessary by the Control Officer to determine whether such source is in compliance with the applicable emission limitations and other control measures.

(b) ~~((The information pursuant to Rule 8.11(a) hereof shall be reported to the Control Officer on forms supplied by the Olympic Region Clean Air Agency. Such reports shall be filed at such times as the Control Officer shall direct.))~~ When requested by the Agency, the information pursuant to Rule 8.11(a) must be reported on forms supplied by the Agency.

#### AMENDATORY SECTION

##### **Rule 8.12.1 Definitions**

Unless a different meaning is clearly required by context, the following words and phrases, as used in this Rule, ~~((shall))~~ will have the following meanings:

**"CARB"** means California Air Resources Board.

**"CARB Certified"** means a vapor recovery system, equipment, or any component thereof, for which the California Air Resources Board (CARB) has evaluated its performance and issued an Executive Order.

**"CARB Executive Order"** means a document issued by the Executive Officer of the California Air Resources Board that specified the requirements for specific vapor control equipment and the procedures used in installing, maintaining, inspecting, or testing vapor recovery systems.

**"Enhanced Vapor Recovery (EVR)"** means performance standards and specifications set forth in the CARB CP 201 (Certification Procedure for Vapor Recovery Systems at gasoline dispensing facilities) Sections 3 through 9.

**"Gasoline"** means a petroleum distillate, which is a liquid at standard conditions and has a true vapor pressure greater than four pounds per square inch absolute at 20°C and is used as a fuel for internal combustion engines. Any liquid sold as a vehicle fuel with a true vapor pressure greater than four pounds per square inch absolute at 20°C is considered 'gasoline' ~~((for purpose of))~~ in this regulation.

**"Gasoline Dispensing Facility"** means any site dispensing gasoline from stationary storage tanks including facilities dispensing gasoline for automotive, aviation, and marine uses.

**"Stage I"** means gasoline vapor recovery during all gasoline marketing transfer operations except motor vehicle refueling.

**"Stage II"** means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.

**"Submerged Fill Line"** means any discharge pipe or nozzle designed to be within six (6) inches of the bottom of the tank and submerged at all times.

**"Throughput"** means the amount of gasoline passing through a facility.

~~((**"Transport Tank"** means a container used for shipping gasoline over roadways.))~~

**"Vapor Recovery System"** means equipment that reduces the emissions of volatile organic compounds to the ambient air.

#### AMENDATORY SECTION

##### **Rule 8.12.2 General Requirements**

(a) All gasoline dispensing facilities with gasoline storage tanks, regardless of size ~~((shall))~~ must:

(1) Not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(i) Minimize gasoline spills;

- (ii) Clean up spills as soon as practicable;
  - (iii) Cover all open gasoline containers and all gasoline storage tank fill-pipes with a gasketed seal when not in use; and
  - (iv) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.
- (b) Gasoline storage tanks with a capacity of 2,000 gallons or more (~~shall~~) must be equipped with submerged fill lines.
- (c) Gasoline dispensing facilities may be subject to registration per Rule 4.1.
- (d) Gasoline dispensing facilities may be subject to Notice of Construction requirements per Rule 6.1.

**AMENDATORY SECTION**

**Rule 8.12.4 Testing Requirements**

(a) The owner or operator of a gasoline dispensing facility with a cumulative storage capacity of 10,000 gallons or more and equipped with Stage I EVR must conduct the following performance tests:

(1) Initial performance testing (~~shall~~) must be completed, for all performance tests listed in Table 1, after initial installation and prior to the facility dispensing fuel commercially; and,

(2) Subsequent testing (~~shall~~) must be conducted according to the schedule in Table 1.

(b) The owner or operator of a gasoline dispensing facility with a cumulative gasoline storage capacity of 10,000 gallons or more that is equipped with Stage I, but not equipped with Stage I EVR, (~~shall~~) must conduct the appropriate Static Pressure Performance of Vapor Recovery Systems test in Table 1 at least once every 13 months.

(c) Tests (~~shall~~) must be conducted in accordance with the CARB test procedure specified, or CARB-approved equivalent test procedures.

(d) Tests (~~shall~~) must be performed by a third-party independent testing company trained in the testing methods.

(e) In the event of a failed performance test, the owner or operator (~~shall~~) must correct the cause of the failure in accordance with Rule 8.12.5(c) and retest within 30 days of the date of the failed test.

(f) The owner or operator (~~shall~~) must report to the Agency the results of all required performance testing within 30 days of the test date.

**Table 1: Performance Testing**

| A | An owner/operator of a facility with underground storage tanks ( <del>shall</del> ) <u>must</u> conduct the following tests...             | After the initial testing, the owner/operator ( <del>shall</del> ) <u>must</u> conduct the subsequent tests... |
|---|--|--|
|   | A1. TP-201.3 – Static Pressure Performance of Vapor Recovery Systems   | at least once every 13 months  |
|   | A2. TP-201.1E – Leak Rate and Cracking Pressure of P/V Vent Valves   | at least once every 37 months  |
|   | A3. TP-201.3C – Determination of Vapor Piping Connection to Underground Gasoline Storage Tanks (Tie-Tank Test)                             |  |
|   | A4. TP-201.1B – Static Torque of Rotatable Stage I Adaptors  | at least once every 13 months  |
|   | A5. TP-201.1C or TP-201.1D <sup>1</sup> – Leak Rate of Drop Tube/Drain Valve Assembly or Leak Rate of Drop Tube/Overfill Prevention Device | at least once every 13 months  |

|          |   |   |
|----------|---|---|
| <b>B</b> | <b>An owner/operator with aboveground storage tanks (<del>shall</del>) <u>must</u> conduct the following tests...</b> | <b>After the initial testing, the owner/operator (<del>shall</del>) <u>must</u> conduct the subsequent tests...</b> |
|          | <b>B1. TP-206.3 or TP-201.3B<sup>2</sup> – Static Pressure Performance of Vapor Recovery Systems</b>                  | at least once every 13 months   |
|          | <b>B2. TP-201.1B – Static Torque of Rotatable Stage I Adaptors<sup>3</sup></b>  | at least once every 13 months   |
|          | <b>B3. TP-201.1E – Leak Rate and Cracking Pressure of P/V Vent Valves</b>   | at least once every 37 months   |

<sup>1</sup> TP-201.1C has no overfill prevention device and TP-201.1D is required for drop tubes with overfill prevention

<sup>2</sup> TP-206.3 is required for aboveground storage tanks equipped with Stage I EVR

<sup>3</sup> TP-201.1B only required for aboveground storage tanks equipped with Rotatable Stage I Adaptors

## AMENDATORY SECTION

### Rule 8.12.5 Self-Inspection Requirements

(a) The owner or operator of a gasoline dispensing facility (~~shall~~) must complete self-inspections of the vapor recovery system. The inspection must occur at least once a week, or after each gasoline delivery, whichever is less frequent. At a minimum, the following items (~~shall~~) must be inspected:

(1) All adaptors (~~shall~~) must be equipped with vapor-tight caps;

(2) All fill and vapor recovery wells or boxes (~~shall~~) must be free of liquid gasoline;

(3) All gasoline storage tank fill-pipes (~~shall~~) must have gasketed seals in good working condition;

(4) All caps (~~shall~~) must have gasketed seals in good working condition; and,

(5) Vapor recovery adaptors on the storage tanks (~~shall~~) must seal upon disconnect.

(b) The dates and results of the self-inspections (~~shall~~) must be recorded.

(c) No later than 15 days after discovery, the owner or operator (~~shall~~) must take corrective actions to repair, replace, or adjust defective equipment found during any of the following events:

(1) Performance tests;

(2) Routine maintenance checks;

(3) Self-inspections; or,

(4) Agency compliance inspections.

## AMENDATORY SECTION

### Rule 8.12.6 Recordkeeping Requirements

(a) The following records (~~shall~~) must be maintained on site for no less than five years from origination, and copies made available to the Agency upon request:

(1) Records of all maintenance and repair activities;

(2) Records of all self-inspections conducted per Rule 8.12.5;

(3) Records of all performance tests required by Rule 8.12.4;

and,

(4) Monthly gasoline throughput records.

(b) The following records (~~shall~~) must be maintained on site for the life of the gasoline dispensing facility or the associated equipment, whichever is earlier:

(1) Any determinations issued by the Agency per Rule 6.1;

(2) Any GDF Notice of Intent to Operate submitted to the Agency per Rule 6.1 (b) (3).

**AMENDATORY SECTION****RULE 8.13 RESERVED (~~DRY-CLEANERS~~)**

**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.

**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~~) means 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 CRF 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~~) on or b(~~B~~)efore 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.

**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.

## 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~~) means 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.

## AMENDATORY 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~~) means 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.

WSR 22-05-061  
PERMANENT RULES  
NORTHWEST CLEAN  
AIR AGENCY

[Filed February 10, 2022, 3:26 p.m., effective March 13, 2022]

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

Purpose:

- Updating the adoption-by-reference date for externally referenced rules to allow the agency to implement the most recent version of those state and federal rules (NWCAA Section 104).
- Amending the program that regulates portable sources to make it easier for the agency to keep track of these types of sources, which helps level the playing field with respect to permitting, registration, and inspections (NWCAA Sections 133, 200, 300, 320, 514).
- Updating the emission inventory reporting requirement for all registered sources to clarify the rule to reflect current practice and house the requirement in a single section rather than relying on multiple authorities (NWCAA Section 150).
- Clarifying the fee for air operating permit facilities operating sewage sludge incinerators to maintain a level playing field, minimize emissions to protect public health, and to administer fair and appropriate fees while maintaining agency financial stability (NWCAA Sections 200, 320).
- Creating a regulatory program to reduce emissions from crushing operations to level the playing field for dust control by applying the same standards to most existing and new crushers (NWCAA Sections 200, 300, 512).
- Clarifying the permanent shutdown concept to make the requirements clearer to agency staff and the regulated public, to better avoid surprises and misunderstandings (NWCAA Sections 200, 320, 325).
- Rolling registration exemptions from Section 321 into Section 320 to make the rule clearer and more consistent with the rest of the regulation (NWCAA Sections 320, 321).

Citation of Rules Affected by this Order: New Sections 512 and 514 of the Regulation of the NWCAA; repealing Section 321 of the Regulation of the NWCAA; and amending Sections 104, 133, 150, 200, 300, 320, and 325 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 22-01-056 on December 8, 2021.

Date Adopted: February 10, 2022.

Mark Buford  
Executive Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of December 8, 2021 (~~(April 21, 2021)~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433

WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state((-)wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of December 8, 2021 (~~(April 21, 2021)~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWWW, YYYYY, ZZZZZ, BBBBBB, CCCCCC, EEEEEEE, FFFFFFF, GGGGGG, HHHHHH, JJJJJJ, MMMMMM, NNNNNN, QQQQQQ, SSSSSS, TTTTTT, VVVVVV, WWWWWW, XXXXXX, ZZZZZZ, AAAAAA, DDDDDDD, EEEEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022

**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.

#### AMENDATORY SECTION

##### SECTION 133 - CIVIL PENALTY

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAA may incur a civil penalty in an amount not to exceed \$19,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the 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 shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal. The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties, 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 90 days late with such payments, or persons failing to file a relocation notice to relocate into NWCAA jurisdiction with required registration fee under NWCAA 514.3 may be assessed ~~((subject to))~~ a penalty equal to 3 ~~((three))~~ times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within 5 ~~((five))~~ years from the date of said suspension. After 5 ~~((five))~~ years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015, February 10, 2022

#### AMENDATORY SECTION

##### SECTION 150 - POLLUTANT DISCLOSURE - REPORTING BY AIR CONTAMINANT SOURCES

150.1 Every person operating a registered air contaminant source ~~((with actual annual emissions of 25 tons or more of a single air pollutant))~~ or a Chapter 401 source, as defined in WAC 173-401-200, ~~((subject to the operating permit program))~~ shall file annually ~~((at a time determined by the NWCAA))~~ and on forms furnished by the NWCAA a report setting forth:

~~((150.11))~~ (A) The nature of the enterprise.

~~((150.12))~~ (B) A list of process materials which are potentially significant sources of emissions used in, and incidental to, its manufacturing processes, including by-products and waste products.

~~((150.13))~~ (C) The estimated calendar year emissions ~~((of))~~ which may include each criteria air pollutant, hazardous air pollutant, toxic air pollutant, and volatile organic compounds (VOC). Every person filing an annual emissions inventory shall retain at the facility the calculations, associated production data, and emission factors used to obtain the estimates.

150.~~((14))~~2 Annual calendar year emission reports shall be submitted to the NWCAA by no later than April 15 of the following year ~~((e.g., 2010 emission report is due April 15, 2011))~~ unless otherwise specified by NWCAA. If the emission report is not submitted by the required date and the emissions are used to determine ~~((operating permit))~~ fees as described in NWCAA ~~((Section))~~ 322.4 and 320.3, potential to emit may be used to determine said fees.

~~((150.2 Every person operating a registered source other than those identified in 150.1 may be required by the Control Officer to submit periodic emission reports.))~~

150.3 Every person operating any source or sources which directly or indirectly emits or contributes air contaminants within the jurisdictional area of the NWCAA may be required to report to the Control Officer, at a time or times ~~((7))~~ selected by the Control Officer, ~~((such as))~~ production rates, sales or other data (including quantities of products used or any other information) as may be required to estimate the emissions from the various air contaminant sources. ~~((Data will be held confidential under Section 114 if so requested by the owner or manager and such request meets the requirements of Section 114. Such sources include, but are not limited to, dealers in gaseous liquid or solid fossil fuels for public consumption in motor vehicles or for space heating purposes.))~~

PASSED: February 14, 1973 AMENDED: September 8, 1993, December 8, 1993, November 12, 1999, November 8, 2007, February 10, 2022

## AMENDATORY SECTION

### SECTION 200 - DEFINITIONS

The terms used in the Regulation of the NWCAA are defined in this section as follows:

...

AIR OPERATING PERMIT (AOP) AFFECTED SOURCE - This term shall have the meaning given to it in WAC 173-401-200. Additionally, for the purposes of NWCAA 322.4e), for Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit are not part of the AOP affected source.

...

CRUSHING OPERATION - Metallic and nonmetallic mineral processing plants including, but not limited to, rock, asphalt, and concrete crushers, aggregate screens, and sand and gravel operations. It includes: crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations as well as crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin. Sources subject to 40 CFR 60 Subpart 000 (Standards of Performance for Nonmetallic Mineral Processing Plants) are considered crushing operations.

...

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) The restart of a stationary source after permanent shutdown

(C) Any other project that constitutes a new (~~stationary~~) source under the Federal Clean Air Act

...

PERMANENT SHUTDOWN - Permanently stopping or terminating all processes at a "stationary source" or "emissions unit." Except as provided in subsections (A), ~~(and)~~ (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.

(A) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in NWCAA Section 325. Failure to file such a report does not mean that a shutdown was not permanent.

(B) Any shutdown lasting 2 or more years is considered to be permanent.

(C) A registered source that does not pay the applicable annual registration fee by the deadline is considered in permanent shutdown unless notified in writing by the NWCAA.

...

PORTABLE SOURCE - A portable source is one that is designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Portable sources include only those that are subject to registration under NWCAA Section 320. Nonroad engines are not considered portable sources.

...

~~((TEMPORARY SOURCE - An emissions unit that remains or will remain at one location for less than 12 consecutive months. A location is any single site at a building, structure, facility, or installation. A nonroad engine is not considered a temporary source.))~~

...

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, February 10, 2022

**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.

#### AMENDATORY SECTION

##### SECTION 300 - NEW SOURCE REVIEW

300.1(A) A Notice of Construction (NOC) application must be filed by the owner or operator and an Order of Approval must be issued by the NWCAA, prior to beginning actual construction of any new source or making any modification, except for any of the following:

(1) Emissions units that are categorically exempt under NWCAA 300.3.

(2) Emissions units that are exempt under NWCAA 300.4.

~~((3) Any temporary sources operating under NWCAA 300.17.~~

~~(4)~~) (3) Any emissions unit covered under a General Order of Approval and operating in accordance with NWCAA 300.16.

(B) New source review of a modification is limited to the emissions unit or units proposed to be added to or modified at an existing stationary source and the air contaminants whose emissions would increase above the emission thresholds in NWCAA 300.4 as a result of the modification.

(C) New source review is required for an increase in a plant-wide cap or an emissions-unit-specific emission limit.

(D) The Control Officer may require that a new source or modification, that would otherwise be exempt under this section, submit a Notice of Construction application and be issued an Order of Approval as specified in this section. The Control Officer may also require that individual pollutant emission increases that would otherwise be exempt under this section be included in the Order of Approval review. This discretionary determination will be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer appropriate information as necessary to make this determination.

300.2 In lieu of this section, any new major stationary source or major modification located in an attainment or unclassifiable area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-113 and WAC 173-400-700 through 173-400-750, as applicable, for the pollutant for which the project is major. Additionally, any new major stationary source or major modification located in a nonattainment area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-112 and WAC 173-400-800 through 173-400-860, as applicable, for the pollutant and for precursors of the pollutant for which the area is in nonattainment.

### 300.3 Categorical Exemptions from New Source Review

Construction of a new emissions unit that falls within one of the categories listed in NWCAA 300.3 is exempt from new source review. Modification of any emissions unit listed in NWCAA 300.3 is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The owner or operator shall keep sufficient records to document the exemption under this subsection.

#### (A) 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 house keeping, architectural or maintenance coatings to stationary structures, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.)
- (6) Plumbing installation, plumbing protective coating application and maintenance activities

#### (7) Roofing application and maintenance

(8) Insulation application and maintenance, excluding products for resale

#### (9) Janitorial services and consumer use of janitorial products

#### (B) Storage tanks:

(1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils

- (2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation
  - (3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions
  - (4) Process and white water storage tanks
  - (5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity
  - (6) Operation, loading, and unloading of storage tanks less than or equal to 1,100 gallon capacity, with lids or other appropriate closure, that store materials that do not contain Toxic Air Pollutants, as defined in chapter 173-460 WAC, or that have a maximum vapor pressure of 550 mm mercury at 21°C
  - (7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons
  - (8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids with no VOC content
- (C) New or modified fuel burning equipment with a heat input capacity (higher heating value) less than all of the following:
- (1) 500,000 Btu/hr coal or other solid fuels with less than or equal to 0.5% sulfur
  - (2) 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610
  - (3) 400,000 Btu/hr wood
  - (4) 1,000,000 Btu/hr gasoline, kerosene, #1 or #2 fuel oil and with less than or equal to 0.05% sulfur
  - (5) 10,000,000 Btu/hr natural gas, propane, or LPG. This includes combustion units that have natural gas as a primary fuel source and ultra-low sulfur diesel (less than 15 ppm by weight sulfur) as a secondary fuel source that is combusted only during testing or periods of natural gas curtailment beyond the control of the source.
- (D) Material handling:
- (1) Continuous digester chip feeders
  - (2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture
  - (3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%
  - (4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon capacity with lids or other appropriate closure. The high boiling point organic material shall not have an atmospheric boiling point of less than 150°C or a vapor pressure more than 5 mm mercury at 21°C.
- (E) Water treatment:
- (1) Septic sewer systems, not including active wastewater treatment facilities
  - (2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease
  - (3) De-aeration (oxygen scavenging) of water where Toxic Air Pollutants as defined in chapter 173-460 WAC are not emitted
  - (4) Process water filtration system and demineralizer vents
  - (5) Sewer manholes, junction boxes, sumps, and lift stations associated with wastewater treatment systems

(6) Demineralizer tanks

(7) Alum tanks

(8) Clean water condensate tanks

(F) Laboratory testing and quality assurance/control testing equipment, including fume hoods, used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

(G) Monitoring/quality assurance/testing:

(1) Equipment and instrumentation used for quality control/assurance or inspection purpose

(2) Hydraulic and hydrostatic testing equipment

(3) Sample gathering, preparation, and management

(4) Vents from continuous emission monitors and other analyzers

(H) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent

(I) Emergency Stationary Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance, and operates in these capacities for less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

(J) Miscellaneous:

(1) Single-family residences and duplexes

(2) Plastic pipe welding

(3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting

(4) Comfort air conditioning

(5) Flares used to indicate danger to the public

(6) Natural and forced air vents and stacks for bathroom/toilet activities

(7) Personal care activities

(8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires

(9) Tobacco smoking rooms and areas

(10) Noncommercial smokehouses

(11) Blacksmith forges for single forges

(12) Vehicle maintenance activities, not including vehicle surface coating

(13) Vehicle or equipment washing

(14) Wax application

(15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment

(16) Ozone generators and ozonation equipment

(17) Solar simulators

(18) Ultraviolet curing processes, to the extent that Toxic Air Pollutant gases as defined in chapter 173-460 WAC are not emitted

(19) Electrical circuit breakers, transformers, or switching equipment installation or operation

- (20) Pulse capacitors
  - (21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives, excluding pneumatic conveying
  - (22) Fire suppression equipment
  - (23) Recovery boiler blow-down tank
  - (24) Screw press vents
  - (25) Drop hammers or hydraulic presses for forging or metal working
  - (26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight
  - (27) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities
  - (28) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C not emitting Toxic Air Pollutants as defined in chapter 173-460 WAC
  - (29) Surface coating and dip coating operations using materials containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC
  - (30) Cleaning and stripping activities and equipment using solutions containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC. Acid solutions used on metallic substances are not exempt
  - (31) Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from Toxic Air Pollutant analysis pursuant to chapter 173-460 WAC
  - (32) Crushing operations less than 4,500 tons per calendar day
  - (33) Relocation of a subject portable source operating in accordance with a NWCAA Order of Approval
- 300.4 Emissions Threshold Exemptions from New Source Review
- (A) Construction of a new emissions unit that has an uncontrolled potential to emit emission rate below all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.
  - (B) A modification to an existing emissions unit that increases the unit's actual emissions by less than all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.
  - (C) Greenhouse gas emissions are exempt from new source review under this section except to the extent required under WAC 173-400-720, Prevention of Significant Deterioration. The owner or operator of a source or emissions unit may request that the NWCAA issue an Order to impose emission limits and/or operation limitations for greenhouse gas emissions.
  - (D) Exemption threshold levels:
- POLLUTANT THRESHOLD LEVEL (ton per year)
- (1) Total Suspended Particulates: 1.25
  - (2) PM<sub>10</sub>: 0.75
  - (3) PM<sub>2.5</sub>: 0.5
  - (4) Sulfur Dioxide: 2.0
  - (5) Nitrogen Oxides: 2.0
  - (6) Volatile Organic Compounds, total: 2.0
  - (7) Carbon Monoxide: 5.0
  - (8) Lead: 0.005
  - (9) Ozone Depleting Substances, total: 1.0

(10) Toxic Air Pollutants: The small quantity emission rate (SQER) specified for each TAP in WAC 173-460-150

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall be submitted on forms provided by the NWCAA and be accompanied by the appropriate new source review fee specified in NWCAA 324.2.

300.8 Notice of Construction - Completeness Determination.

(A) Within 30 days after receiving a Notice of Construction application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of the additional information necessary to complete the application.

(B) A complete application contains all the information necessary for processing the application. At a minimum, the application shall include information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the NWCAA to determine that the construction or modification will meet the applicable requirements. Designating an application complete for purposes of permit processing does not preclude the NWCAA from requesting or accepting additional information.

(C) An application is not complete until the State Environmental Policy Act (SEPA) has been addressed under chapter 197-11 WAC and NWCAA Section 155.

(D) An application is not complete until the new source review fee specified in NWCAA 324.2 has been paid.

300.9 Notice of Construction - Final Determination

(A) Within 60 days after receipt of a complete Notice of Construction application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 as applicable on a preliminary decision, followed as promptly as practicable by a final decision.

(B) An Order of Approval cannot be issued for the Notice of Construction application until the following criteria are met for those proposed emissions units and pollutants that triggered new source review, as applicable:

(1) Comply with all applicable New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), National Emission Standards for Hazardous Air Pollutants for source categories (NESHAP), emission standards adopted under chapter 70.94 RCW and all applicable NWCAA emission standards.

(2) Employ Best Available Control Technology (BACT).

(3) Allowable emissions will not cause or contribute to a violation of any ambient air quality standard. In addition, if located in a nonattainment area, allowable emissions will not violate the requirements for reasonable further progress established by the State Implementation Plan (SIP). If NWCAA has reason to be concerned that the construction or modification would cause or contribute to a violation of a NAAQS, NWCAA may require modeling using the guideline models and procedures of Appendix W of 40 CFR Part 51 as referenced in NWCAA 104.2. Written approval from the EPA must be obtained for any modification to or substitution for a guideline model.

(4) Comply with the applicable requirements of NWCAA Section 305.

(5) Comply with the applicable requirements of WAC 173-400-200 and 173-400-205.

(6) All fees required under NWCAA 324.2 have been paid.

(C) In addition to the requirements of NWCAA 300.9(B), an Order of Approval cannot be issued until the new project meets the Toxic Air Pollutant requirements of WAC 173-400-110 (2)(d).

(D) A person seeking approval to construct a new source or modification that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the Notice of Construction application required by this section. A Notice of Construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with NWCAA Section 305.

(E) Every final determination on a Notice of Construction application 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 NWCAA.

#### 300.10 Order of Approval - Appeals

(A) The issuance of an Order of Approval, any conditions contained in an Order of Approval, or the denial of a Notice of Construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(B) The NWCAA shall promptly mail copies of each Order approving or denying a Notice of Construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

#### 300.11 Order of Approval - Time Limitations

(A) An Order of Approval becomes invalid if the owner or operator has not begun actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the approval period upon a satisfactory showing that an extension is justified. A written request for an extension shall include an updated BACT analysis submitted prior to the expiration of the current approval period. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months.

(B) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

#### 300.12 Order of Approval - Revision

(A) The owner or operator may request a revision to an Order of Approval and the NWCAA may approve the request provided that the revision:

(1) Will not cause the source to exceed an emissions standard set by regulation or rule;

(2) Will not result in an exceedance of any ambient air quality standard;

(3) Will not adversely impact the ability to determine compliance with an emissions standard;

(4) Will continue to require Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and Toxic Air Pollutant Best Available Control Technology (T-BACT), as applicable, for each new source or modification approved by the original Order of Approval (BACT and T-BACT as defined at the time of original approval); and

(5) Will meet the requirements of NWCAA 300.7 through 300.13 and NWCAA Section 305, as applicable.

(B) A revision under NWCAA 300.12 only addresses projects where the emissions increase from each emissions unit qualifies as exempt under NWCAA 300.4.

(C) Each Order of Approval revision request shall be submitted and will be processed as a Notice of Construction application. The application shall be submitted with the appropriate new source review fee specified in NWCAA 324.2.

#### 300.13 Order of Approval - Requirements to Comply

Owners and operators of a source or emissions unit shall:

(A) Comply with the conditions in the Order of Approval or General Order of Approval, as applicable.

(B) Install and operate in accordance with the information submitted in the Notice of Construction application or application for coverage under a General Order of Approval.

#### 300.14 Notice of Construction Application Inapplicability Determination

An owner or operator may submit a written request to the NWCAA to obtain a written determination that a project is exempt from new source review under NWCAA 300.1 or from replacement or substantial alteration of control technology under NWCAA 300.25. The request shall include a summary of the project, a narrative describing why the project should be exempt from applicability, and the appropriate fee in accordance with NWCAA 324.2.

Within 30 days after receiving a request under this subsection, the NWCAA shall either provide the written determination of inapplicability, notify the applicant in writing that the project requires an Order of Approval, or notify the applicant in writing of the additional information necessary to complete the request.

#### 300.16 General Order of Approval

In lieu of filing a Notice of Construction application under NWCAA 300.7, the owner or operator of a qualifying emissions unit may apply for coverage under a General Order of Approval issued under this section.

(A) The NWCAA may issue a General Order of Approval applicable to a specific source type or emissions unit. A General Order of Approval shall identify criteria by which a source or emissions unit may qualify for coverage under the General Order of Approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered source or emissions unit.

(1) These terms and conditions shall include as appropriate:

(a) Emissions limitations and/or control requirements based on Best Available Control Technology (BACT) and/or BACT for Toxic Air Pollutants (T-BACT);

(b) Operational restrictions, such as:

(i) Criteria related to the physical size of the source or emissions unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria as determined by the NWCAA;

(c) Monitoring, reporting, and recordkeeping requirements to ensure compliance with the applicable emission limits and/or control requirements;

(d) Initial and periodic emission testing requirements;

(e) Compliance with WAC 173-400-112, NWCAA 300.9(B), and 300.9(C), as applicable;

(f) Compliance with 40 CFR Parts 60, 61, 62, and 63; emission standards adopted under chapter 70.94 RCW; and all applicable NWCAA emission standards; and

(g) The application and approval process to obtain coverage under the specific General Order of Approval.

(2) The original issuance and any revisions to a General Order of Approval must comply with NWCAA Section 305, as applicable.

(3) The NWCAA may review and revise a General Order of Approval at any time. Revisions to General Orders of Approval shall only take effect prospectively.

(B) Application for coverage under a General Order of Approval.

(1) In lieu of applying for an individual Order of Approval under NWCAA 300.7, an owner or operator of a source or emissions unit may apply for and receive coverage from the NWCAA under a General Order of Approval if:

(a) The owner or operator of the source or emissions unit applies for coverage under a General Order of Approval in accordance with NWCAA 300.16 and any conditions of the specific General Order of Approval related to application for and the granting of coverage;

(b) The source or emissions unit meets all the applicability qualifications listed in the requested General Order of Approval;

(c) The requested source or emissions unit is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-113 (3) and (4), WAC 173-400-700 through 173-400-750, or 173-400-800 through 173-400-860; and

(d) The requested source or emissions unit does not trigger applicability of the Air Operating Permit program under NWCAA Section 322, or trigger a required modification of an existing Air Operating Permit.

(2) Owners or operators of sources or emissions units applying for coverage under a General Order of Approval shall do so using the forms provided by the NWCAA and include the application fee as specified in NWCAA 324.2. The application must include all information necessary to determine qualification for, and to assure compliance with, a General Order of Approval.

(3) An application is incomplete until the NWCAA has received all required fees.

(4) The owner or operator of the proposed source or emissions unit that qualifies for coverage under a General Order of Approval shall not begin actual construction of the proposed source or emissions unit until written confirmation of coverage from the NWCAA has been received in accordance with the procedures established in NWCAA 300.16(C).

(C) Each General Order of Approval shall include a section on how an applicant is to request coverage and how the NWCAA will grant coverage.

(1) Within 30 days after receipt of an application for coverage under a General Order of Approval, the NWCAA shall either provide written confirmation of coverage under the General Order of Approval or notify the applicant in writing that the application is incomplete, inaccurate, or does not qualify for coverage under the General Order of Approval. If an application is incomplete, the NWCAA shall notify the applicant of the information needed to complete the application. If an application does not qualify for coverage under the General Order of Approval, the NWCAA shall notify the applicant of the reasons why the application does not qualify. Coverage under a General Order

of Approval is effective as of the date of issuance of the written confirmation of coverage under the General Order.

(2) Failure of an owner or operator to obtain written confirmation of coverage under NWCAA 300.16 prior to beginning actual construction is considered failure to obtain an Order of Approval pursuant to NWCAA 300.1.

(D) An owner or operator who has received confirmation of coverage under a specific General Order of Approval may later request to be excluded from coverage under that General Order of Approval by applying to the NWCAA for an individual Order of Approval under NWCAA 300.7 or for coverage under another General Order of Approval. If the NWCAA issues an individual Order of Approval or confirms coverage under a different General Order of Approval, coverage under the original General Order of Approval is automatically terminated, effective on the effective date of the individual Order of Approval or confirmation of coverage under the new General Order of Approval.

(E) The Control Officer may require that a new source or modification, that would otherwise be covered under a General Order of Approval, submit a Notice of Construction application and be issued an individual Order of Approval under NWCAA 300.7 through 300.13. This discretionary determination shall be based on the nature of air pollution emissions from the source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the owner or operator shall submit to the Control Officer, appropriate information as necessary to make this determination.

~~(300.17 Temporary Sources~~

~~(A) This section applies to temporary sources that do not qualify for exemption under NWCAA 300.3 or 300.4.~~

~~(B) Temporary sources shall submit a Notice of Construction application and an Order of Approval must be issued by the NWCAA in accordance with NWCAA 300.7 through 300.13 prior to beginning operation within the NWCAA jurisdiction except as provided under NWCAA 300.17(E).~~

~~(C) If a temporary source is locating in a nonattainment area within the NWCAA jurisdiction and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, the source must obtain an Order of Approval from the NWCAA regardless of the exemption in NWCAA 300.17(E).~~

~~(D) If a temporary source is a major stationary source then it must also comply with WAC 173-400-700 through 173-400-750 as applicable.~~

~~(E) Except as provided in 300.17 (C) and (D), temporary sources are allowed to operate within the NWCAA jurisdiction without obtaining an Order of Approval from the NWCAA provided that:~~

~~(1) A permitting authority in Washington State issued a Notice of Construction Order of Approval for the temporary source after July 1, 2010 identifying the emissions unit as a "portable" or "temporary" source.~~

~~(2) Operation within the NWCAA jurisdiction under this provision is limited to a single 12 consecutive month period commencing with initial startup within the NWCAA jurisdiction. For operation within the NWCAA jurisdiction after this initial 12 consecutive month period, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.17(B).~~

~~(F) The owner or operator shall notify the NWCAA of the intent to relocate into or within the NWCAA jurisdiction at least 15 calendar days prior to beginning operation at a different location. Notifica-~~

tion is not required for relocation within the same major source. The notification shall include a copy of the applicable temporary source Order of Approval and estimated start and end dates at the new location. The owner or operator shall keep a record of the date of initial startup within the NWCAA jurisdiction along with durations and locations of operation.

(G) The first time the owner or operator locates the temporary source within the NWCAA jurisdiction, the initial relocation notice shall include the appropriate annual registered source fee specified in NWCAA 324.1. The owner or operator shall pay an annual registered source fee for each calendar year during which the temporary source operates within the NWCAA jurisdiction.

(H) The owner or operator shall submit the emission inventory required under NWCAA Section 150 to the NWCAA if the temporary source operated in the NWCAA jurisdiction during the preceding calendar year. The data must be sufficient in detail to enable the NWCAA to determine the emissions within its jurisdiction and the yearly aggregate.

(I) To change the conditions in an Order of Approval issued by a permitting authority other than the NWCAA while operating in the NWCAA jurisdiction, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.7 through 300.13.

(J) Prior to modifying a temporary source while operating within the NWCAA jurisdiction under a non-NWCAA Order of Approval, the owner or operator must obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.7 through 300.13.

(K) The NWCAA has authority to enforce the conditions of the Order of Approval that authorizes the temporary source operation, regardless of which permitting authority issued the Order of Approval. The owner or operator shall operate the temporary source in compliance with the conditions set forth in the Order of Approval and any other applicable requirements. Any reports required by the Order of Approval shall be submitted to the NWCAA.

(L) Temporary sources relying upon an Order of Approval issued by a permitting authority other than the NWCAA may be required to obtain an Order of Approval from the NWCAA in accordance with NWCAA 300.17(B) at the discretion of the Control Officer based on the source type, emission quantity, or suitability of the non-NWCAA Order of Approval requirements.)

300.25 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

(A) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emissions unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or similar parts replacement.

(B) For emissions units and associated pollutants not otherwise reviewable under NWCAA Section 300, the NWCAA may:

(1) Require that the owner or operator employ RACT for the affected emissions unit;

(2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(3) Prescribe other requirements as authorized by chapter 70.94 RCW.

(C) Within 30 days after receiving a Notice of Construction application under this subsection, the NWCAA shall either notify the applicant in writing that the application is complete or notify the ap-

plicant in writing of the additional information necessary to complete the application. Within 30 days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

(D) An owner or operator shall not begin actual construction on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within 30 days of receipt of a complete Notice of Construction application.

(E) Approval to replace or substantially alter emission control technology shall become invalid if the owner or operator has not begun actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the 18-month approval period upon a satisfactory showing that an extension is justified. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, July 11, 1973, August 9, 1978, October 12, 1989, February 14, 1990, April 14, 1993, November 12, 1998, November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 13, 2015, April 11, 2019, February 10, 2022

#### AMENDATORY SECTION

##### SECTION 320 - REGISTRATION PROGRAM

320.1 Program Authority, Applicability and Purpose. As authorized by RCW 70.94.151, the Board, by the NWCAA Regulation, requires registration and reporting for specified classes of stationary air contaminant sources (~~((including temporary sources))~~) which may cause or contribute to air pollution. This classification is made according to levels and types of emissions and other characteristics that cause or contribute to air pollution with special reference to effects on health, economic and social factors, and physical effects on property. The purpose of the registration program is to develop and maintain a current and accurate record of stationary air contaminant sources (~~((including temporary sources))~~) within the NWCAA jurisdiction. 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.

320.2 Registration and Reporting. The owner or operator of a stationary air contaminant source (~~((including temporary sources))~~) for which registration and reporting are required, shall register the source with the NWCAA. The owner or operator shall make reports to the NWCAA containing information as may be required by the NWCAA concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. All records and reports required by the

NWCAA Regulation for registered sources shall be maintained for at least 3 years from the date of generation and be made available to NWCAA personnel upon request.

320.3 Annual Registration Fees. Registered sources shall pay an annual registration fee. The Board has determined the fee for registered sources as specified in Section 324.1. The amount of fees collected shall not exceed the costs of implementing this registration program. Implementing the registration program includes, but is not limited to:

(A) Review of registered source emission reports and other periodic reports and conducting related compilation and reporting activities;

(B) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a registered source is complying with permit, Order, or regulatory requirements, as applicable, including determination of registration applicability;

(C) The share attributable to registered sources of the development and maintenance of emissions inventories;

(D) The share attributable to registered sources for data storage and retrieval systems necessary for support of the registration program;

(E) Registered source fee determinations, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(F) The share attributable to registered sources for administration of the program including costs of clerical support, supervision, and management; tracking of time, revenues and expenditures; accounting activities; required fiscal audits and reporting activities; enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement.

320.4 Any registered source that does not pay the applicable annual registration fee by the deadline shall be considered in permanent shutdown unless notified in writing by the NWCAA. (~~a new source and shall submit a Notice of Construction application and receive an Order of Approval prior to resumption of operation.~~)

#### 320.5 Registration Required

(A) Source categories. Except as provided in NWCAA (~~Section 321~~) 320.6, the owner or operator of a source that falls into at least one of the following source categories shall register with the NWCAA:

Any source subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61 other than Subpart M (National Emission Standard for Asbestos).

Any source subject to 40 CFR Part 62.

Any affected source subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (NESHAP) under 40 CFR Part 63.

Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability of EPA requirements under 40 CFR Part 63.

Any source that is subject to an Order of Approval or has been confirmed to be covered by a General Order of Approval by the NWCAA.

Any source with a facility-wide uncontrolled potential to emit emission rate of one or more pollutants equal to or greater than the emission rates listed in NWCAA 300.4(D). (~~registered source exemption~~)

~~emission rates as specified in WAC 173-400-102(5) or the Small Quantity Emission Rates (SQER) for Toxic Air Pollutants as specified in chapter 173-460 WAC.)~~

(B) Source types. Except as provided in NWCAA (~~(Section 321)~~) 320.6, the owner or operator of a source that falls into at least one of the following source types shall register with the NWCAA:

Abrasive blasting operations.

Agricultural chemical facilities engaged in the manufacturing of liquid or dry fertilizers or pesticides including, but not limited to, ammonium sulfate.

Agricultural drying and dehydrating operations.

Asphalt and asphalt products production facilities, not including asphalt laying equipment.

Casting facilities and foundries, ferrous and nonferrous.

Coffee roasting facilities.

Commercial smoke houses.

Composite fabrication and repair facilities including fiberglass boat building and repair, and miscellaneous parts fabrication.

Composting operations (commercial, industrial, and municipal).

Concrete product manufacturers and ready mix and premix concrete plants.

Flexible vinyl and urethane coating and printing operations.

Gasoline dispensing facilities and bulk gasoline plants.

Glass manufacturing plants.

Grain, seed, animal feed, legume, and flour processing operations and handling facilities.

Graphic art systems including, but not limited to, lithographic and screen printing operations.

Material handling and transfer facilities that emit fine particulate to the atmosphere, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems.

Metal plating and anodizing operations.

~~((Metallic and nonmetallic mineral processing plants, including rock crushing plants and sand and gravel operations.))~~ Crushing operations.

Perchloroethylene dry cleaners.

Soil and groundwater remediation projects including soil vapor extraction (active), thermal soil desorption, or groundwater air stripping operations. Surface coating operations, including coating of motor vehicles, mobile equipment, boats, ships, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates.

Wastewater treatment plants.

Welding and metal cutting operations.

Wood products mills, including lumber, plywood, shingle, wood-chip, veneer operations, dry kilns, pulpwood insulating board, cabinet works, casket works, furniture, wood by-products, or any combination thereof.

(C) Equipment classification list. Except as provided in NWCAA (~~(Section 321)~~) 320.6, the owner or operator of the following equipment shall register with the NWCAA:

Any affected source subject to a New Source Performance Standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters).

Chemical concentration evaporators.

Crematoria or animal carcass incinerators.

Degreasers of the cold or vapor type where the solvent for which contains more than 5 percent halogenated compounds or Toxic Air Pollutants.

Ethylene oxide (ETO) sterilizers.

Fuel burning equipment (except natural gas only) with a heat input of more than 1 million Btu per hour, except comfort heating, air conditioning systems, or ventilation systems not designed to remove contaminants generated by or released from equipment.

Fuel burning equipment that fires only natural gas with a heat input of more than 10 million Btu per hour.

Gas collection systems with flares or other combustion devices.

Gas or odor control equipment having a rated capacity greater than or equal to 200 cfm including, but not limited to:

- (1) Activated carbon adsorption
- (2) Barometric condenser
- (3) Biofilter
- (4) Catalytic oxidizer
- (5) Chemical oxidation
- (6) Dry sorbent injection
- (7) Non-selective catalytic reduction (NSCR)
- (8) Refrigerated condenser
- (9) Selective catalytic reduction (SCR)
- (10) Selective non-catalytic reduction (SNCR)
- (11) Wet scrubber

Incinerators;

Ovens, burn-out or heat-treat.

Particulate control equipment having a rated capacity greater than or equal to 2,000 cfm including, but not limited to:

- (1) Baghouse
- (2) Cyclone
- (3) Demister
- (4) Electrostatic precipitator (ESP), dry or wet
- (5) High efficiency particulate air (HEPA) filter
- (6) High velocity air filter
- (7) Mat or panel filter
- (8) Mist eliminator
- (9) Multiclones
- (10) Rotoclone
- (11) Screen
- (12) Venturi scrubber
- (13) Water curtain

Stationary internal combustion engines and turbines rated at 500 horsepower or more.

Storage tanks, reservoirs, or containers with:

- (1) a rated capacity greater than 6,000 gallons storing volatile organic liquids, other than petroleum liquids, having a true vapor pressure equal to or greater than 1.5 psia or
- (2) a rated capacity greater than 40,000 gallons storing petroleum liquids having a true vapor pressure equal to or greater than 1.5 psia.

Waste oil burners rated at greater than 0.5 million Btu per hour.

(D) The Control Officer may require that any source or equipment, that would otherwise be exempt, be registered as specified in this section. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

(( PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 8, 1996, November 12, 1998, November 12, 1999, July 14, 2005, June 9, 2011, April 11, 2019 ))

### 320.6 Exemptions from Registration

(A) Exclusion or exemption from registration does not absolve the owner or operator from complying with all other requirements of the NWCAA Regulation.

(B) The following sources are exempt from registration:

Chapter 401 sources, as defined in WAC 173-401-200. For Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit shall be subject to registration as applicable with the NWCAA and incur associated fees.

Residential and agricultural composting activities.

(C) The Control Officer may exempt any source or equipment, including any listed in NWCAA 320.5, from registration. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

(D) An exemption from new source review under NWCAA Section 300 is not explicitly an exemption from registration under NWCAA Section 320.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 8, 1996, November 12, 1998, November 12, 1999, July 14, 2005, June 9, 2011, April 11, 2019, February 10, 2022

### REPEALER

The following section is being repealed:

~~(( SECTION 321 - EXEMPTIONS FROM REGISTRATION~~

~~321.1 Exclusion or exemption from registration does not absolve the owner or operator from complying with all other requirements of the NWCAA Regulation.~~

~~321.2 The following stationary sources of air contaminants are exempt from registration:~~

~~Sources that require an Air Operating Permit pursuant to NWCAA Section 322.~~

~~Residential and agricultural composting activities.~~

~~321.3 The Control Officer may exempt any source or equipment, including any listed in NWCAA Section 320, from registration. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.~~

~~321.4 An exemption from new source review under NWCAA Section 300 is not explicitly an exemption from registration under NWCAA Section 320.~~

~~PASSED: January 8, 1969 AMENDED: February 14, 1973, August 8, 1978, March 13, 1997, November 12, 1998, June 9, 2011, November 17, 2011, April 11, 2019))~~

### AMENDATORY SECTION

SECTION 325 - TRANSFER OR PERMANENT SHUTDOWN

325.1 A registration, regulatory order, approval to construct, operate or use any article, machine, equipment, or other contrivance, shall not be transferable, whether by operation of law or otherwise, either from one location to another or from one piece of equipment to another provided that, registered sources which are designed to be

portable and are moved from one location to another may retain the same registration so long as they abide by the requirements of NWCAA Section ~~((s))~~ 300 ~~((and 301))~~.

325.2 The registered owner or operator shall report the transfer of ownership or permanent shutdown of a registered source to the NWCAA within ninety (90) days of shutdown or transfer. The report shall contain the following information:

~~((a))~~ (A) Legal name of the existing business as registered with the NWCAA;

~~((b))~~ (B) Effective date of the shutdown or transfer;

~~((e))~~ (C) Description of the affected emission units; ~~((and))~~

~~((d))~~ (D) Name and telephone number of the owner, operator, and authorized representative ~~((-))~~; and

~~((e))~~ (E) The new legal name of the business, and legal names and contact information for the owner, operator, and registered agent.

325.3 Any party that assumes ownership and/or operational control of a registered source shall file a written report with the NWCAA within ~~((ninety (90)))~~ 90 days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

~~((a))~~ (A) Legal name of the business before and after the transfer and individuals involved in the transfer;

~~((b))~~ (B) Effective date of the transfer;

~~((e))~~ (C) Description of the affected emission units; and

~~((d))~~ (D) Name and telephone number of the owner, operator, and authorized representative.

325.4 In the case of a permanent shutdown, process and 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).

325.5 Upon permanent shutdown, the source no longer has authorization to operate and any associated Orders become invalid. Prior to resumption of operation after a permanent shutdown, the source shall obtain, as applicable, a new Order of Approval as a new source and re-register.

PASSED: February 4, 1970 AMENDED: February 14, 1973, July 10, 2003, July 14, 2005, November 8, 2007, February 10, 2022

**Reviser's note:** The typographical 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.

## NEW SECTION

### SECTION 512 - CRUSHING OPERATIONS

#### 512.1 Purpose.

This section of the NWCAA Regulation establishes general standards to control particulate emissions from crushing operations.

#### 512.2 Applicability.

The provisions of this section apply to crushing operations as defined in NWCAA Section 200.

#### 512.3 Definitions.

All terms not defined herein shall have the meaning given in NWCAA Section 200 or 40 CFR 60 Subpart 000.

#### 512.4 Visible Emissions.

Visible emissions from crushing operations, including but not limited to, any crusher, screening operation, belt conveyor, or transfer point, greater than 5% opacity for more than an aggregate of 3 mi-

notes in any consecutive 60-minute period, as measured by Ecology Method 9A, are prohibited. Visible emissions observed at or beyond the property boundary are prohibited.

#### 512.5 Dust Suppression Plan.

(A) The facility shall develop and implement a written Dust Suppression Plan. The plan must be adequate to control visible emissions as limited in NWCAA 512.4. The Dust Suppression Plan shall be updated if found inadequate to maintain emissions at or below the limits in NWCAA 512.4 and maintained for the active life of the facility. The plan shall list equipment and measures taken to prevent or minimize dust from fugitive and process emission points including:

(1) Materials loading (e.g., front-end loader dumping, surface mining, loading primary (jaw) crusher, loading aggregate trucks, aggregate and/or waste added to/removed from stockpiles);

(2) Wind erosion;

(3) Paved and unpaved traveled surfaces;

(4) Conveyors;

(5) Crushers;

(6) Screens; and

(7) Other fugitive and process emission points, as applicable.

(B) Upon initial startup and weekly thereafter, conduct qualitative inspections for visible emissions from the crushing operations including at or beyond the property boundary. At any time, if visible emissions are seen in excess of the limit in NWCAA 512.4, take corrective action and update Dust Suppression Plan as necessary.

#### 512.6 Recordkeeping.

(A) Records shall be kept of the total tons crushed: each day (recorded daily) and each calendar month.

(B) Keep a log of the inspections under NWCAA 512.5(B) to demonstrate implementation of the Dust Suppression Plan. At a minimum, the log shall include the following:

(1) Date & time of inspections.

(2) Outcome of the observations of visible emissions.

(3) What action(s) in the Dust Suppression Plan is/are being followed.

(4) Description of corrective action taken if dust emissions were observed.

(5) Name of person making the record.

PASSED: February 10, 2022

### NEW SECTION

#### Section 514 - PORTABLE SOURCES

##### 514.1 Applicability.

The provisions of this section apply to portable sources as defined in NWCAA Section 200.

##### 514.2 Recordkeeping.

Keep records of location and dates of operation in NWCAA jurisdiction.

##### 514.3 Relocation Notice Required.

The owner or operator shall notify the NWCAA in writing in a format provided or approved by NWCAA of the intent to relocate into, out of, or within the NWCAA jurisdiction at least 15 calendar days prior to commencing relocating to a different location (e.g., pit, quarry, operating site). Failure to file a relocation notice to relocate into NWCAA jurisdiction pursuant to this section with required registration

fee may result in penalties up to 3 times the original registration fee owed under NWCAA 324.1.

Notification is not required for relocating within the same stationary source (e.g., Chapter 401 source or pit).

PASSED: February 10, 2022

**WSR 22-06-006**  
**PERMANENT RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**

[Filed February 17, 2022, 3:37 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: To address inequities among state employees, streamline process and application of civil service rules, and reduce significant workload for employers. These changes will result in more equal treatment between certain categories of employees and will result in less manual date adjustments for employers. Removing the requirement to adjust for leave without pay (LWOP) will make it easier for employers to administer because they will no longer need to decipher which employees need to have their service dates manually adjusted; easier application of anniversary and periodic increment date (PID) for transfers between general government nonrepresented and represented employees; and easier application of anniversary and PID for transfers between general government and institutions of higher education. To remove the requirement for a general government employer to adjust an employee's anniversary date, unbroken service date, and PID for any period of LWOP which exceeds 15 consecutive calendar days; and to remove the requirement for a higher education employer to adjust an employee's vacation leave accrual date and PID for any period of LWOP which exceeds 10 working days.

Citation of Rules Affected by this Order: Repealing WAC 357-31-346; and amending WAC 357-01-023, 357-01-348, 357-28-055, 357-28-056, 357-31-180, and 357-31-345.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 22-02-048 on January 3, 2022.

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 6, Repealed 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 1.

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 6, Repealed 1.

Date Adopted: February 17, 2022.

Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

**OTS-3356.1**

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

**WAC 357-01-023 Anniversary date (general government).** For employees of general government agencies, anniversary date is the unbroken service date plus prior state service (~~(minus leave without pay when it exceeds fifteen consecutive calendar days as provided in WAC 357-31-345)~~). The anniversary date is used to determine when vacation leave over two hundred forty hours is lost and for computing the rate of vacation leave accrual beginning with the fifth year of total state employment.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-093, § 357-01-023, filed 5/27/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

**WAC 357-01-348 Unbroken service date (general government).** The date a general government employee began current continuous state service. This date is used for computing the rate of vacation leave accrual through and including the employee's fourth year of continuous service. (~~(The unbroken service date is adjusted by leave without pay when it exceeds fifteen consecutive calendar days as provided in WAC 357-31-345.)~~)

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-093, § 357-01-348, filed 5/27/05, effective 7/1/05.]

## OTS-3355.2

AMENDATORY SECTION (Amending WSR 16-05-057, filed 2/12/16, effective 3/14/16)

**WAC 357-28-055 How is the periodic increment date determined for a general government employee?** (1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum but below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070; or

(b) ~~((The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.~~

~~(e))~~) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-057, § 357-28-055, filed 2/12/16, effective 3/14/16; WSR 13-19-043, § 357-28-055, filed 9/13/13, effective 10/18/13. Statutory Authority: RCW 41.06.150. WSR 10-17-062, § 357-28-055, filed 8/13/10, effective 9/15/10. Statutory Authority: Chapter 41.06 RCW. WSR 06-11-048, § 357-28-055, filed 5/11/06, effective 6/12/06; WSR 05-01-205, § 357-28-055, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 16-05-057, filed 2/12/16, effective 3/14/16)

**WAC 357-28-056 How is the periodic increment date determined for a higher education employee?** (1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum ~~((but))~~ and at or below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070; or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

(c) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

~~((d) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-346.))~~

[Statutory Authority: Chapter 41.06 RCW. WSR 16-05-057, § 357-28-056, filed 2/12/16, effective 3/14/16; WSR 13-19-043, § 357-28-056, filed 9/13/13, effective 10/18/13; WSR 06-11-048, § 357-28-056, filed 5/11/06, effective 6/12/06.]

**OTS-3354.3**

AMENDATORY SECTION (Amending WSR 12-04-016, filed 1/24/12, effective 2/24/12)

**WAC 357-31-180** ~~When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for the leave without pay?~~ Leave without pay (~~taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do~~) does not affect the rate at which employees accrue vacation leave. (~~For all other periods of leave without pay, the following applies:~~

~~(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.~~

~~(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.)~~

[Statutory Authority: Chapter 41.06 RCW. WSR 12-04-016, § 357-31-180, filed 1/24/12, effective 2/24/12; WSR 10-23-040, § 357-31-180, filed 11/10/10, effective 12/13/10; WSR 05-08-137, § 357-31-180, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 09-11-068, filed 5/14/09, effective 6/16/09)

**WAC 357-31-345** ~~How does leave without pay affect a general government employee's ((anniversary date, unbroken service date, periodic increment date, and)) seniority date?~~ (~~(1) For a general government employee, the anniversary date, unbroken service date, and periodic increment date is adjusted for any period of leave without pay which exceeds fifteen consecutive calendar days except when the leave without pay is taken for:~~

~~(a) Military leave of absence without pay as provided in WAC 357-31-370;~~

~~(b) Compensable work-related injury or illness leave;~~

~~(c) Government service leave not to exceed two years and one month;~~

~~(d) Educational leave, contingent upon successful completion of the coursework; and/or~~

~~(e) Voluntarily reducing the effect of an employer's layoff.~~

~~(2) When an employee is on leave without pay for more than fifteen consecutive calendar days and the absence is not due to one of the reasons listed above, the employee's anniversary date, unbroken service date and periodic increment date must be moved forward in an amount equal to the number of calendar days on leave without pay.~~

~~(3) For))~~ A general government employee's s (~~the~~) seniority date is adjusted for leave without pay in accordance with WAC 357-46-055.

[Statutory Authority: Chapter 41.06 RCW. WSR 09-11-068, § 357-31-345, filed 5/14/09, effective 6/16/09; WSR 05-08-138, § 357-31-345, filed 4/6/05, effective 7/1/05.]

REPEALER

The following section of the Washington Administrative Code is repealed:

|                |  |
|----------------|--|
| WAC 357-31-346 | Does leave without pay affect a higher education employee's periodic increment date? |
|----------------|--|

**WSR 22-06-008**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)  
 [Filed February 18, 2022, 9:54 a.m., effective March 21, 2022]

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

Purpose: Amend WAC 388-101-3000 Definitions, to clarify the definitions that apply throughout chapters 388-101 and 388-101D WAC, and update the definition of abuse to reflect recent statutory changes; and amend WAC 388-101-3020 Compliance, to make changes to promote the safety and well-being of certified community residential services and supports clients.

Citation of Rules Affected by this Order: Amending WAC 388-101-3000 and 388-101-3020.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.080, 71A.26.040, 74.34.165.

Adopted under notice filed as WSR 21-23-109 on November 17, 2021.

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

Number of Sections Adopted at the Request of a 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 2, Repealed 0.

Date Adopted: February 18, 2022.

Katherine I. Vasquez  
 Rules Coordinator

**SHS-4848.2**

AMENDATORY SECTION (Amending WSR 18-07-061, filed 3/15/18, effective 4/15/18)

**WAC 388-101-3000 Definitions.** The definitions in this section apply throughout this chapter and chapter 388-101D WAC unless the context clearly indicates otherwise.

(1) "Abandonment" ((means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care)) has the same meaning as defined in RCW 74.34.020.

(2) "Abuse" ((means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult)) has the same meaning as defined in RCW 74.34.020.

~~((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.~~

~~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:~~

~~(1) "**Sexual abuse**" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.~~

~~(2) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.~~

~~(3) "**Mental abuse**" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.~~

~~(4) "**Personal exploitation**" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.~~

~~(5) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:~~

~~(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;~~

~~(b) Is not medically authorized; or~~

~~(c) Otherwise constitutes abuse under this section.)~~

~~(3) "**Associated with the applicant**" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.~~

~~(4) "**Case manager**" means the ((division of)) developmental disabilities administration case resource manager or social worker assigned to a client.~~

~~(5) "**Certification**" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.~~

~~(6) "**Chaperone agreement**" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.~~

~~(7) "**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)) has the same meaning as defined in RCW 74.34.020.

(8) "**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020(4) and has been determined eligible to receive services by the ~~((division of))~~ developmental disabilities administration under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

(9) "**Client services**" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

(10) "**Consent**" means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(11) "**Crisis diversion**" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the ~~((division of))~~ developmental disabilities administration.

(12) "**Crisis diversion bed services**" means crisis diversion that is provided in a residence maintained by the service provider.

(13) "**Crisis diversion support services**" means crisis diversion that is provided in the client's own home.

"**Department**" means the Washington state department of social and health services.

(14) "**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 the vulnerable adult's profit or advantage. Some examples of financial exploitation are given))~~ has the same meaning as defined in RCW 74.34.020.

(16) "**Functional assessment**" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

(17) "**Group home**" means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapter 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

(18) "**Group training home**" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

(19) "**Immediate**" or "**immediately**" means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

(20) "**Immediate risk,**" "**immediate threat,**" or "**imminent danger**" means serious physical harm to or death of a client or serious threat to a client's life, health, or safety.

(21) "**Individual financial plan**" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

(22) "**Individual instruction and support plan**" means a plan developed by the service provider and the client. The individual instruction and support plan:

~~((1))~~ (a) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

~~((2))~~ (b) Includes client goals for instruction and support that will be formally documented during the year; and

~~((3))~~ (c) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (such as, individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

(23) **"Individual support plan"** means a document that authorizes and identifies the ~~((division of))~~ developmental disabilities administration paid services to meet a client's assessed needs.

(24) **"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

(25) **"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff must also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients must be considered instruction and support services staff for the purposes of the applicable training requirements.

(26) **"Legal representative"** means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney at law, attorney in fact, or any other person who is authorized by law to act for another person.

(27) **"Long-term care workers"** include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(28) **"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

(29) **"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove that restricts freedom of movement or normal access to their body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are medically authorized and 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.

(30) **"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

(31) **"Medication assistance"** means assistance with self-administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

(32) **"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

(33) **"Minimal"** means a violation that results in little or no negative outcome or little or no potential harm for a client.

(34) **"Moderate"** means a violation that results in negative outcome or actual or potential harm for a client.

(35) **"Negative outcome"** includes any negative effect on the client's physical, mental, or psychosocial well-being, including but limited to the client's safety, quality of life, or quality of care.

(36) **"Neglect"** ((means:

~~(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or~~

~~(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100)) has the same meaning as defined in RCW 74.34.020.~~

(37) **"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

(38) **"Physical restraint"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

(39) **"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

(40) **"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include antipsychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

(41) **"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220(12).

(42) **"Recurring"** or **"repeated"** means that the department has cited the service provider for a violation of licensing laws or rules and one or more of the following is present:

((1)) (a) The department previously imposed an enforcement remedy for a violation of the same law, rule, or for substantially the same problem within the preceding twenty-four months; or

((2)) (b) The department cited a violation of the same law, rule, or for substantially the same problem on two occasions within the preceding twenty-four months.

(43) **"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something they do not want to do, or removes something the client owns or has earned.

(44) **"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

(45) **"Serious"** means a violation that results in one or more negative outcomes and significant actual harm to a client that does not constitute imminent danger. It also means there is reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a client.

(46) **"Severity"** means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being (such as, safety, quality of life, quality of care).

(47) **"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

(48) **"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

(49) **"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

(50) **"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, service provider, employment/day program provider, and the person's legal representative or family, provided the person consents to the family member's involvement.

(51) **"Uncorrected deficiency"** means the department has cited a violation of WAC or RCW following any type of certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

(52) **"Vulnerable adult"** (~~includes a person:~~

~~(1) Sixty years of age or older who has the functional, mental, or physical inability to care for themselves;~~

~~(2) Found incapacitated under chapter 11.88 RCW;~~

~~(3) Who has a developmental disability as defined under RCW 71A.10.020;~~

~~(4) Admitted to any facility;~~

~~(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or~~

~~(6) Receiving services from an individual provider)) has the same meaning as defined in RCW 74.34.020.~~

[Statutory Authority: Chapters 71A.12 and 74.34 RCW. WSR 18-07-061, § 388-101-3000, filed 3/15/18, effective 4/15/18. Statutory Authority: Chapters 71A.12, 74.34, and 74.39A RCW. WSR 16-18-040, § 388-101-3000, filed 8/30/16, effective 9/30/16. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 14-10-028, § 388-101-3000, filed 4/28/14, effective 5/29/14; WSR 12-02-048, § 388-101-3000, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR

10-16-084, § 388-101-3000, filed 7/30/10, effective 1/1/11. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3000, filed 12/21/07, effective 2/1/08.]

AMENDATORY SECTION (Amending WSR 14-10-028, filed 4/28/14, effective 5/29/14)

**WAC 388-101-3020 Compliance.** The service provider must be in compliance with:

(1) All the requirements of this chapter(~~(-)~~) and chapter 388-101D WAC, except that(~~(-)~~) the licensing requirements for adult family homes and assisted living facilities supersede (~~(this chapter)~~) these chapters if the requirements under respective chapters 388-76 and 388-78A WAC conflict with (~~(this chapter)~~) these chapters;

(2) The laws governing this chapter, including chapter 71A.12 (~~and~~), 71A.22, and 71A.26 RCW;

(3) The requirements of chapter 74.34 RCW;

(4) The department's residential services contract. Except that, the requirements of this chapter supersede any conflicting requirements with the contract, or appendices to the contract; and

(5) Other relevant federal, state and local laws, requirements, and ordinances.

[Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 14-10-028, § 388-101-3020, filed 4/28/14, effective 5/29/14. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3020, filed 12/21/07, effective 2/1/08.]

WSR 22-06-010  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-20—Filed February 18, 2022, 10:29 a.m., effective March 21, 2022]

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

Purpose: Recreational clam and oyster seasons are adjusted based on recent clam and oyster population survey data, recreational harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations. Seasons will be opened or extended on some public beaches and closed, removed, or shortened on others. These amendments reflect openings and closures based on current data. Three new areas will be designated as oyster drill restricted areas based on the recent discovery of the presence of harmful invasive oyster drills at these locations. This designation is necessary to reduce risk of spread of oyster drills from these locations.

Citation of Rules Affected by this Order: Amending WAC 220-330-110, 220-330-140, and 220-340-130.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 22-02-067 on January 5, 2022; and preproposal filed as WSR 21-21-069 on October 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: Some minor changes have been made, including adding a degree symbol to geographical coordinates and clarifying that the newly opened Washington department of fish and wildlife Hoodsport Hatchery beach's oyster season is open during daylight hours only. The following language has been inserted for clarification: "... from one hour before official sunrise until one hour after official sunset ..."

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

Number of Sections Adopted at the Request of a 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 0, Repealed 0.

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

Date Adopted: February 14, 2022.

Kelly Susewind  
Director

OTS-3546.2

AMENDATORY SECTION (Amending WSR 21-06-060, filed 2/26/21, effective 3/29/21)

**WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons.** It is lawful to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open (~~(January 1 through March 31 and August 1)~~) July 15 through September 30 only.
- (7) Blaine Marine Park: Closed year-round.
- (8) Blake Island State Park Marina: Closed year-round.
- (9) Blowers Bluff North: Closed year-round.
- (10) Brown's Point Lighthouse: Closed year-round.
- (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (12) Cama Beach State Park: Closed year-round.
- (13) Camano Island State Park: Closed year-round.
- (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- (15) Coupeville: Closed year-round.
- (16) Cultus Bay: Closed year-round.
- (17) Dash Point County Park: Closed year-round.
- (18) Dash Point State Park: Open September 1 through May 31 only.
- ~~((18))~~ (19) Dave Mackie County Park: Closed year-round.
- ~~((19))~~ (20) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary, south to Rosario Head (~~((48° 25.03'N, 122° 39.98'W))~~) 48.4172°, -122.6663° are closed year-round.
- ~~((20))~~ (21) Des Moines City Park: Closed year-round.
- ~~((21))~~ (22) Discovery Park: Closed year-round.
- ~~((22))~~ (23) DNR-142: Closed year-round.
- ~~((23))~~ (24) DNR-144 (Sleeper): Closed year-round.
- ~~((24))~~ (25) Dockton County Park: Closed year-round.
- ~~((25))~~ (26) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open (~~(June)~~) July 1 through September 30 only.
- ~~((26))~~ (27) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- ~~((27))~~ (28) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except tidelands identified as prohibited (~~(or unclassified)~~) by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- ~~((28))~~ (29) Duckabush: Open November 1 through April 30 only.
- ~~((29))~~ (30) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.

- ((+30+)) (31) Eagle Creek: Open ((+June+)) July 1 through August 31 only.
- ((+31+)) (32) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ((+32+)) (33) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ((+33+)) (34) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ((+34+)) (35) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ((+35+)) (36) Fay Bainbridge Park: Closed year-round.
- ((+36+)) (37) Fort Flagler State Park: Open January 1 through April 15 and ((+June+)) July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ((+37+)) (38) Freeland County Park: Open October 1 through May 31 only.
- ((+38+)) (39) Frye Cove County Park: Open May 1 through May 31 only.
- ((+39+)) (40) Fudge Point State Park: Closed year-round.
- ((+40+)) (41) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- ((+41+)) (42) Golden Gardens: Closed year-round.
- ((+42+)) (43) Graveyard Spit: Closed year-round.
- ((+43+)) (44) Guillemot Cove Nature Reserve: Closed year-round.
- ((+44+)) (45) Guss Island: All tidelands of Guss Island are closed year-round.
- ((+45+)) ~~Hoodsport: Tidelands at Hoodsport Salmon Hatchery are closed year-round.~~)
- (46) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- (47) Howarth Park/Darlington Beach: Closed year-round.
- (48) Illahee State Park: Open April 1 through July 31 only.
- (49) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open September 1 through September 30 only.
- (50) Ingvald J. Gronvold Park: Open April 1 through April 30 only.
- (51) Joemma Beach State Park: Closed year-round.
- ((+51+)) (52) Kayak Point County Park: Closed year-round.
- ((+52+)) (53) Kitsap Memorial State Park: Closed year-round.
- ((+53+)) (54) Kopachuck State Park: Open April 1 through May 31 only.
- ((+54+)) (55) Lent Landing (Port Washington Narrows): Closed year-round.
- ((+55+)) (56) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- ((+56+)) (57) Lincoln Park: Closed year-round.
- ((+57+)) (58) Lions Park (Bremerton): Closed year-round.
- ((+58+)) (59) Lofall: Closed year-round.

~~((59))~~ (60) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((60))~~ (61) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((61))~~ (62) Long Point West: Closed year-round.

~~((62))~~ (63) Lower Roto Vista Park: Closed year-round.

~~((63))~~ (64) March Point Recreation Area: Closed year-round.

~~((64))~~ (65) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((65))~~ (66) Meadowdale County Park: Closed year-round.

~~((66))~~ (67) Mee-Kwa-Mooks Park: Closed year-round.

~~((67))~~ (68) Monroe Landing: Closed year-round.

~~((68))~~ (69) Mukilteo: Closed year-round.

~~((69))~~ (70) Mystery Bay State Park: Open October 1 through April 30 only.

~~((70))~~ (71) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.

~~((71))~~ (72) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((72))~~ (73) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((73))~~ (74) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.

~~((74))~~ (75) North Beach County Park: Closed year-round.

~~((75))~~ (76) Oak Bay County Park: Closed year-round.

~~((76))~~ (77) Oak Harbor: Closed year-round.

~~((77))~~ (78) Oak Harbor Beach Park: Closed year-round.

~~((78))~~ (79) Oak Harbor City Park: Closed year-round.

~~((79))~~ (80) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((80))~~ (81) Old Mill County Park (Silverdale): Closed year-round.

~~((81))~~ (82) Olympia Shoal: Closed year-round.

~~((82))~~ (83) Pat Carey Vista Park: Closed year-round.

~~((83))~~ (84) Penrose Point State Park: Open March 1 through April 30 only, except that portion of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((84))~~ (85) Picnic Point County Park: Closed year-round.

~~((85))~~ (86) Pitship Point: Closed year-round.

~~((86))~~ (87) Pitt Island: All tidelands on Pitt Island are closed year-round.

~~((87))~~ (88) Pleasant Harbor State Park: Closed year-round.

~~((88))~~ (89) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((89))~~ (90) Point Defiance: Closed year-round.

- ((+90)) (91) Point Whitney Tidelands and Point Whitney Lagoon: ((Open January 1 through April 30 only)) Closed year-round.
- ((+91)) (92) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.
- ((+92)) (93) Port Gamble Heritage Park Tidelands: Open ((January)) September 1 through ((April)) September 30 only.
- ((+93)) (94) Port Gardner: Closed year-round.
- ((+94)) (95) Port Townsend Ship Canal/Portage Beach: ((Closed year-round)) Open September 1 through September 30 only.
- ((+95)) (96) Post Point: Closed year-round.
- ((+96)) (97) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through ((April 30)) May 15 only.
- ((+97)) (98) Priest Point County Park: Closed year-round.
- ((+98)) (99) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.
- ((+99)) (100) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.
- ((+100)) (101) Quilcene Bay Boat Ramp: Open January 1 through April 30 only.
- ((+101)) (102) Retsil: Closed year-round.
- ((+102)) (103) Richmond Beach Saltwater Park: Closed year-round.
- ((+103)) (104) Salt Creek Recreation Area (DNR-419): Closed year-round.
- ((+104)) (105) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- ((+105)) (106) Saltwater State Park: Closed year-round.
- ((+106)) (107) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore ((~~48° 34.47'N, 122° 26.64'W~~)) 48.5745°, -122.4440° are closed year-round.
- ((+107)) (108) Scenic Beach State Park: Closed year-round.
- ((+108)) (109) Seahurst County Park: Closed year-round.
- ((+109)) (110) Semiahmoo County Park: Closed year-round.
- ((+110)) (111) Semiahmoo Marina: Closed year-round.
- ((+111)) (112) Sequim Bay State Park: Open January 1 through ((June)) April 30 only.
- ((+112)) (113) Shine Tidelands State Park: Open January 1 through May 15 only.
- ((+113)) (114) Silverdale Waterfront Park: Closed year-round.
- ((+114)) (115) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- ((+115)) (116) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- ((+116)) (117) South Carkeek Park: Closed year-round.
- ((+117)) (118) Southworth: Closed year-round.
- ((+118)) (119) Spencer Spit State Park: Open March 1 through July 31 only.
- ((+119)) (120) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.
- ((+120)) (121) Taylor Bay: Closed year-round.

- ((121)) (122) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.
- ((122)) (123) Triton Cove Tidelands: Open June 1 through August 31 only.
- ((123)) (124) Twanoh State Park: Open August 1 through September 30 only.
- ((124)) (125) Walker County Park: Closed year-round.
- ((125)) (126) WDFW Hoodspport Hatchery: Tidelands at Hoodspport Salmon Hatchery are closed year-round.
- (127) West Dewatto: DNR Beach 44A open July 1 through September 30 only.
- ((126)) (128) West Pass Access: Closed year-round.
- ((127)) (129) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open ((August 1) July 15 through ((September 30) August 31 only.
- ((128)) (130) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.
- ((129)) (131) Wolfe Property State Park: Open January 1 through May 15 only.
- ((130)) (132) Woodard Bay Natural Resource Conservation Area: Closed year-round.
- ((131)) (133) It is lawful to take, dig for, and possess clams and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 21-06-060 (Order 21-24), § 220-330-110, filed 2/26/21, effective 3/29/21; WSR 20-05-019 (Order 20-21), § 220-330-110, filed 2/7/20, effective 3/9/20; WSR 19-08-044 (Order 19-51), § 220-330-110, filed 3/29/19, effective 4/29/19; WSR 18-11-077 (Order 18-99), § 220-330-110, filed 5/17/18, effective 6/17/18; WSR 17-18-004 (Order 17-214), § 220-330-110, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-330-110, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047. WSR 16-07-012 (Order 16-41), § 220-56-350, filed 3/4/16, effective 4/4/16. Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 15-09-046, § 220-56-350, filed 4/10/15, effective 5/11/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047. WSR 14-07-057 (Order 14-61), § 220-56-350, filed 3/14/14, effective 4/14/14. Statutory Authority: RCW 77.04.020 and 77.12.047. WSR 13-06-034 (Order 13-44), § 220-56-350, filed 3/1/13, effective 4/1/13. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 12-07-011 (Order 12-31), § 220-56-350, filed 3/12/12, effective 4/12/12; WSR 11-09-073 (Order 11-66), § 220-56-350, filed 4/19/11, effective 5/20/11. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-56-350, filed 3/19/10, effective 5/1/10; WSR 09-06-042 (Order 09-27), § 220-56-350, filed 2/25/09, effective 5/1/09; WSR 08-07-003, § 220-56-350, filed 3/5/08, effective 4/5/08; WSR 07-05-051 (Order 07-22), § 220-56-350, filed 2/16/07, effective 3/19/07; WSR 06-05-085 (Order 06-23), § 220-56-350, filed 2/14/06, effective 5/1/06; WSR 05-05-035 (Order 05-15), § 220-56-350, filed

2/10/05, effective 5/1/05; WSR 04-07-009 (Order 04-39), § 220-56-350, filed 3/4/04, effective 5/1/04; WSR 03-05-057 (Order 03-24), § 220-56-350, filed 2/14/03, effective 5/1/03; WSR 02-17-019 (Order 02-193), § 220-56-350, filed 8/9/02, effective 9/9/02; WSR 02-08-048 (Order 02-53), § 220-56-350, filed 3/29/02, effective 5/1/02; WSR 01-06-036 (Order 01-24), § 220-56-350, filed 3/5/01, effective 5/1/01. Statutory Authority: 2000 c 107 § 7. WSR 00-16-091 (Order 00-134), § 220-56-350, filed 7/31/00, effective 8/31/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29), § 220-56-350, filed 3/29/00, effective 5/1/00; WSR 99-08-029 (Order 99-13), § 220-56-350, filed 3/30/99, effective 5/1/99; WSR 98-06-031, § 220-56-350, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 75.08.080. WSR 97-07-078 (Order 97-53), § 220-56-350, filed 3/19/97, effective 5/1/97; WSR 96-11-078 (Order 96-44), § 220-56-350, filed 5/13/96, effective 6/13/96; WSR 95-12-027 (Order 95-46), § 220-56-350, filed 5/31/95, effective 7/1/95; WSR 94-14-069, § 220-56-350, filed 7/1/94, effective 8/1/94; WSR 93-15-011, § 220-56-350, filed 7/8/93, effective 8/8/93; WSR 93-08-034 (Order 93-20), § 220-56-350, filed 3/31/93, effective 5/1/93; WSR 92-11-012 (Order 92-19), § 220-56-350, filed 5/12/92, effective 6/12/92; WSR 91-08-054 (Order 91-13), § 220-56-350, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-350, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-350, filed 3/16/89; WSR 88-10-013 (Order 88-15), § 220-56-350, filed 4/26/88; WSR 87-09-066 (Order 87-16), § 220-56-350, filed 4/21/87; WSR 86-09-020 (Order 86-08), § 220-56-350, filed 4/9/86; WSR 85-12-046 (Order 85-57), § 220-56-350, filed 6/5/85; WSR 83-07-043 (Order 83-16), § 220-56-350, filed 3/17/83; WSR 81-05-027 (Order 81-13), § 220-56-350, filed 2/17/81, effective 4/1/81; WSR 80-03-064 (Order 80-12), § 220-56-350, filed 2/27/80, effective 4/1/80. Formerly WAC 220-56-082.]

## OTS-3547.2

AMENDATORY SECTION (Amending WSR 21-06-060, filed 2/26/21, effective 3/29/21)

**WAC 220-330-140 Oysters—Areas and seasons.** It is lawful to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open (~~January 1 through March 31 and August 1~~) July 15 through September 30 only.
- (7) Blaine Marine Park: Closed year-round.
- (8) Blake Island State Park Marina: Closed year-round.

- (9) Blowers Bluff North: Closed year-round.
- (10) Brown's Point Lighthouse: Closed year-round.
- (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (12) Cama Beach State Park: Closed year-round.
- (13) Camano Island State Park: Closed year-round.
- (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- (15) Coupeville: Closed year-round.
- (16) Cultus Bay: Closed year-round.
- (17) Dash Point County Park: Closed year-round.
- (18) Dash Point State Park: Open September 1 through May 31 only.
- ~~((18))~~ (19) Dave Mackie County Park: Closed year-round.
- ~~((19))~~ (20) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary to Rosario Head (~~((48° 25.03'N, 122° 39.98'W))~~ 48.4172°, -122.6663°) are closed year-round.
- ~~((20))~~ (21) Des Moines City Park: Closed year-round.
- ~~((21))~~ (22) Discovery Park: Closed year-round.
- ~~((22))~~ (23) DNR-142: Closed year-round.
- ~~((23))~~ (24) DNR-144 (Sleeper): Closed year-round.
- ~~((24))~~ (25) Dockton County Park: Closed year-round.
- ~~((25))~~ (26) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.
- ~~((26))~~ (27) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- ~~((27))~~ (28) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except the tidelands identified as prohibited (~~(or unclassified)~~) by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- ~~((28))~~ (29) Duckabush: Open November 1 through April 30 only.
- ~~((29))~~ (30) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.
- ~~((30))~~ (31) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ~~((31))~~ (32) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ~~((32))~~ (33) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ~~((33))~~ (34) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ~~((34))~~ (35) Fay Bainbridge Park: Closed year-round.
- ~~((35))~~ (36) Fort Flagler State Park: Open January 1 through April 15 and ~~((June))~~ July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ~~((36))~~ (37) Freeland County Park: Open October 1 through May 31 only.
- ~~((37))~~ (38) Frye Cove County Park: Open May 1 through May 31 only.
- ~~((38))~~ (39) Fudge Point State Park: Closed year-round.
- ~~((39))~~ (40) Gertrude Island: All tidelands of Gertrude Island are closed year-round.

- ~~((40))~~ (41) Golden Gardens: Closed year-round.  
~~((41))~~ (42) Graveyard Spit: Closed year-round.  
~~((42))~~ (43) Guillemot Cove Nature Reserve: Closed year-round.  
~~((43))~~ (44) Guss Island: All tidelands of Guss Island are closed year-round.  
~~((44) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.))~~  
(45) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.  
(46) Howarth Park/Darlington Beach: Closed year-round.  
(47) Illahee State Park: Open April 1 through July 31 only.  
(48) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open September 1 through September 30 only.  
(49) Ingvald J. Gronvold Park: Open April 1 through April 30 only.  
(50) Joemma Beach State Park: Closed year-round.  
~~((50))~~ (51) Kayak Point County Park: Closed year-round.  
~~((51))~~ (52) Kitsap Memorial State Park: Closed year-round.  
~~((52))~~ (53) Kopachuck State Park: Open April 1 through May 31 only.  
~~((53))~~ (54) Lent Landing (Port Washington Narrows): Closed year-round.  
~~((54))~~ (55) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.  
~~((55))~~ (56) Lincoln Park: Closed year-round.  
~~((56))~~ (57) Lions Park (Bremerton): Closed year-round.  
~~((57))~~ (58) Lofall: Closed year-round.  
~~((58))~~ (59) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.  
~~((59))~~ (60) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.  
~~((60))~~ (61) Long Point West: Closed year-round.  
~~((61))~~ (62) Lower Roto Vista Park: Closed year-round.  
~~((62))~~ (63) March Point Recreation Area: Closed year-round.  
~~((63))~~ (64) McNeil Island: All tidelands of McNeil Island are closed year-round.  
~~((64))~~ (65) Meadowdale County Park: Closed year-round.  
~~((65))~~ (66) Mee-Kwa-Mooks Park: Closed year-round.  
~~((66))~~ (67) Monroe Landing: Closed year-round.  
~~((67))~~ (68) Mukilteo: Closed year-round.  
~~((68))~~ (69) Mystery Bay State Park: Open October 1 through April 30 only.  
~~((69))~~ (70) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.  
~~((70))~~ (71) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

((+71+)) (72) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

((+72+)) (73) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.

((+73+)) (74) North Beach County Park: Closed year-round.

((+74+)) (75) Oak Bay County Park: Closed year-round.

((+75+)) (76) Oak Harbor: Closed year-round.

((+76+)) (77) Oak Harbor Beach Park: Closed year-round.

((+77+)) (78) Oak Harbor City Park: Closed year-round.

((+78+)) (79) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

((+79+)) (80) Old Mill County Park (Silverdale): Closed year-round.

((+80+)) (81) Olympia Shoal: Closed year-round.

((+81+)) (82) Pat Carey Vista Park: Closed year-round.

((+82+)) (83) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.

((+83+)) (84) Pitship Point: Closed year-round.

((+84+)) (85) Picnic Point County Park: Closed year-round.

((+85+)) (86) Pitt Island: Closed year-round.

((+86+)) (87) Pleasant Harbor State Park: Closed year-round.

((+87+)) (88) Pleasant Harbor WDFW Boat Launch: Closed year-round.

((+88+)) (89) Point Defiance: Closed year-round.

((+89+)) (90) Point Whitney Tidelands and Point Whitney Lagoon: Open January 1 through ~~((August 31))~~ June 30 only.

((+90+)) (91) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

((+91+)) (92) Port Gamble Heritage Park Tidelands: Open ~~((January))~~ September 1 through ~~((April))~~ September 30 only.

((+92+)) (93) Port Gardner: Closed year-round.

((+93+)) (94) Port Townsend Ship Canal/Portage Beach: ~~((Closed year-round))~~ Open September 1 through September 30 only.

((+94+)) (95) Post Point: Closed year-round.

((+95+)) (96) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through ~~((April 30))~~ May 15 only.

((+96+)) (97) Priest Point County Park: Closed year-round.

((+97+)) (98) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

((+98+)) (99) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

((+99+)) (100) Quilcene Boat Ramp: Open January 1 through April 30 only.

((+100+)) (101) Retsil: Closed year-round.

((+101+)) (102) Richmond Beach Saltwater Park: Closed year-round.

- ((102)) (103) Salt Creek Recreation Area (DNR-419): Closed year-round.
- ((103)) (104) Saltair Beach (Kingston Ferry Terminal): Closed year-round.
- ((104)) (105) Saltwater State Park: Closed year-round.
- ((105)) (106) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (~~((48°34.47'N, 122°26.64'W))~~ 48.5745°, -122.4440°) are closed year-round.
- ((106)) (107) Scenic Beach State Park: Closed year-round.
- ((107)) (108) Seahurst County Park: Closed year-round.
- ((108)) (109) Semiahmoo County Park: Closed year-round.
- ((109)) (110) Semiahmoo Marina: Closed year-round.
- ((110)) (111) Sequim Bay State Park: Open January 1 through ((June)) April 30 only.
- ((111)) (112) Shine Tidelands State Park: Open January 1 through May 15 only.
- ((112)) (113) Silverdale Waterfront Park: Closed year-round.
- ((113)) (114) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.
- ((114)) (115) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.
- ((115)) (116) South Carkeek Park: Closed year-round.
- ((116)) (117) Southworth: Closed year-round.
- ((117)) (118) Spencer Spit State Park: Open March 1 through July 31 only.
- ((118)) (119) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.
- ((119)) (120) Taylor Bay: Closed year-round.
- ((120)) (121) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.
- ((121)) (122) Walker County Park: Closed year-round.
- ((122)) (123) WDFW Hoodspout Hatchery: Open April 1 through April 30, from one hour before official sunrise until one hour after official sunset only.
- (124) West Pass Access: Closed year-round.
- ((123)) (125) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open ((August 1)) July 15 through ((September 30)) August 31 only.
- ((124)) (126) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.
- ((125)) (127) Wolfe Property State Park: Open January 1 through May 15 only.
- ((126)) (128) Woodard Bay Natural Resource Conservation Area: Closed year-round.
- ((127)) (129) It is lawful to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 21-06-060 (Order 21-24), § 220-330-140, filed

2/26/21, effective 3/29/21; WSR 20-05-019 (Order 20-21), § 220-330-140, filed 2/7/20, effective 3/9/20; WSR 19-08-044 (Order 19-51), § 220-330-140, filed 3/29/19, effective 4/29/19; WSR 18-11-077 (Order 18-99), § 220-330-140, filed 5/17/18, effective 6/17/18; WSR 17-18-004 (Order 17-214), § 220-330-140, filed 8/24/17, effective 9/24/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-330-140, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04-055 [77.04.055], 77.12.045, and 77.12.047. WSR 16-07-012 (Order 16-41), § 220-56-380, filed 3/4/16, effective 4/4/16. Statutory Authority: RCW 77.04.012, 77.04.055, and 77.12.047. WSR 15-09-046, § 220-56-380, filed 4/10/15, effective 5/11/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047. WSR 14-07-057 (Order 14-61), § 220-56-380, filed 3/14/14, effective 4/14/14. Statutory Authority: RCW 77.04.020 and 77.12.047. WSR 13-06-034 (Order 13-44), § 220-56-380, filed 3/1/13, effective 4/1/13. Statutory Authority: RCW 77.04.020, 77.12.045, and 77.12.047. WSR 12-07-011 (Order 12-31), § 220-56-380, filed 3/12/12, effective 4/12/12; WSR 11-09-073 (Order 11-66), § 220-56-380, filed 4/19/11, effective 5/20/11. Statutory Authority: RCW 77.12.047. WSR 10-07-105 (Order 10-64), § 220-56-380, filed 3/19/10, effective 5/1/10; WSR 09-06-042 (Order 09-27), § 220-56-380, filed 2/25/09, effective 5/1/09; WSR 08-07-003, § 220-56-380, filed 3/5/08, effective 4/5/08; WSR 07-05-051 (Order 07-22), § 220-56-380, filed 2/16/07, effective 3/19/07; WSR 06-05-085 (Order 06-23), § 220-56-380, filed 2/14/06, effective 5/1/06; WSR 05-05-035 (Order 05-15), § 220-56-380, filed 2/10/05, effective 5/1/05; WSR 04-07-009 (Order 04-39), § 220-56-380, filed 3/4/04, effective 5/1/04; WSR 03-05-057 (Order 03-24), § 220-56-380, filed 2/14/03, effective 5/1/03; WSR 02-08-048 (Order 02-53), § 220-56-380, filed 3/29/02, effective 5/1/02; WSR 01-06-036 (Order 01-24), § 220-56-380, filed 3/5/01, effective 5/1/01. Statutory Authority: 2000 c 107 § 7. WSR 00-16-091 (Order 00-134), § 220-56-380, filed 7/31/00, effective 8/31/00. Statutory Authority: RCW 75.08.080, 77.12.040. WSR 00-08-038 (Order 00-29), § 220-56-380, filed 3/29/00, effective 5/1/00; WSR 99-08-029 (Order 99-13), § 220-56-380, filed 3/30/99, effective 5/1/99; WSR 98-06-031, § 220-56-380, filed 2/26/98, effective 5/1/98. Statutory Authority: RCW 75.08.080. WSR 97-07-078 (Order 97-53), § 220-56-380, filed 3/19/97, effective 5/1/97; WSR 96-11-078 (Order 96-44), § 220-56-380, filed 5/13/96, effective 6/13/96; WSR 95-12-027 (Order 95-46), § 220-56-380, filed 5/31/95, effective 7/1/95; WSR 94-14-069, § 220-56-380, filed 7/1/94, effective 8/1/94; WSR 93-08-034 (Order 93-20), § 220-56-380, filed 3/31/93, effective 5/1/93; WSR 92-11-012 (Order 92-19), § 220-56-380, filed 5/12/92, effective 6/12/92; WSR 91-08-054 (Order 91-13), § 220-56-380, filed 4/2/91, effective 5/3/91; WSR 90-06-026, § 220-56-380, filed 2/28/90, effective 3/31/90; WSR 89-07-060 (Order 89-12), § 220-56-380, filed 3/16/89; WSR 88-10-012 and 88-10-013 (Orders 88-14 and 88-15), § 220-56-380, filed 4/26/88; WSR 87-09-066 (Order 87-16), § 220-56-380, filed 4/21/87; WSR 86-09-020 (Order 86-08), § 220-56-380, filed 4/9/86; WSR 84-09-026 (Order 84-22), § 220-56-380, filed 4/11/84; WSR 82-13-040 (Order 82-61), § 220-56-380, filed 6/9/82; WSR 82-07-047 (Order 82-19), § 220-56-380, filed 3/18/82; WSR 81-05-027 (Order 81-13), § 220-56-380, filed 2/17/81, effective 4/1/81; WSR 80-03-064 (Order 80-12), § 220-56-380, filed 2/27/80, effective 4/1/80. Formerly WAC 220-56-086.]

OTS-3548.2

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-340-130 Oyster drill restricted shellfish areas—Puget Sound.** All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters and tidelands of Puget Sound within the following areas are designated as oyster drill restricted shellfish areas:

- (1) Dungeness Bay—Inside and bounded westerly of a line projected from the most easterly tip of Dungeness Spit true-south to the mainland.
- (2) Drayton Harbor—Inside and southerly of a line projected from the north most tip of Semiahmoo Spit to where the International Boundary line intersects the mainland.
- (3) Lummi Bay—Inside the Lummi Dike and inside and bounded by a line projected from (~~(: 48°46'32" N. Lat. 122°40'00" W. Long.)~~) 48.7756°, -122.6667°; thence to (~~(48°45'55" N. Lat. 122°40'00" W. Long.)~~) 48.7653°, -122.6667°; thence to (~~(48°45'55" N. Lat. 122°39'12" W. Long.)~~) 48.7653°, -122.6533°; then following the shoreline northerly (~~(along the beach)~~) to the point of origin.
- (4) Samish Bay—Inside and easterly of a line starting at the most westerly tip of Governor's Point and projected in a southerly direction to the most westerly tip of William Point on Samish Island.
- (5) Padilla Bay—Easterly (including the Swinomish channel) of a line starting at the most westerly tip of William Point on Samish Island and projected southerly to the most northerly tip of March Point on Fidalgo Island.
- (6) Similk and Skagit Bays—Northerly of a line projected across Skagit Bay following latitude 48.333° (48°20' N(~~(-)~~)) and easterly of the Deception Pass bridge.
- (7) Liberty Bay—Inside and westerly of a line projected true south from the most southerly point (~~(at Tower Point)~~) on the Lemolo shoreline, near the powerline tower.
- (8) Dyes Inlet—Inside and northerly of a line projected true east from the most northerly tip of Rocky Point to the mainland.
- (9) Carr Inlet—
  - (a) Burley Lagoon—Inside and northerly of the Purdy bridge.
  - (b) Minter Creek—Inside and westerly of a line projected from the (~~(east)~~) west shore of Carr Inlet at ((122°41'00" W. Long.) -122.6833° longitude true south to ((47°21'00" N. Lat.)) 47.3500° latitude, then true west to shore.
- (10) Case Inlet—
  - (a) Rocky Bay and North Bay—Northerly of a line projected across Case Inlet following latitude 47.3456° (47°20'44" N).
  - (b) Vaughn Bay—Easterly of a line projected true north from the most northerly point of the southern spit at the mouth of Vaughn Bay to the mainland on the north shore.
- (11) Hammersley Inlet and Oakland Bay—Inside, westerly and northerly of a line starting at (~~(the most southeasterly point of Munson Point and projected in a southeasterly direction to Eagle Point)~~)

the shore at 47.2070°, -123.0600° on the north shore of Hammersley Inlet and projected true south to the south shore of Hammersley Inlet.

(12) Totten Inlet, Oyster Bay and Little Skookum Inlet—Inside and southerly of a line starting at the most southeasterly point on Windy Point and projected northeasterly to the most northerly tip of Sandy Point (i.e., the southern base of the Steamboat Island Bridge).

(13) Eld Inlet—

(a) Mud Bay—Inside and westerly of a line projected from the most easterly point of Flapjack Point and projected true south to the mainland.

(b) Sanderson Harbor—Lying inside and westerly of a line starting at the most northern point on Sanderson Spit and projected northeasterly to the mainland.

(14) Nisqually Flats—Inside and southerly of a line starting ((near the DuPont Dock)) on the east shore at ((47°07'00" N. Lat.)) 47.1182°, -122.6657° and projected true west to the mainland.

(15) Hood Canal—

(a) Quilcene Bay—Inside, northerly and easterly of a line starting at the Port of Port Townsend boat ramp north of Coast Seafoods company shellfish hatchery projected easterly to a point at ((48°48'10" N. Lat., 122°51'30" W. Long.)) 48.8028°, -122.8583° and then projected southeasterly to the most westerly tip of Fisherman's Point.

(b) Tarboo Bay—Inside, northerly and easterly of a line starting at the most northerly tip of Long Spit and then projected true west to the mainland.

(c) The Great Bend to Lynch Cove—Inside and bounded southerly and easterly by a line projected from the western most point at Musqueti Point true west to the mainland.

(d) Hamma Hamma Flats and ((~~Jorsted~~)) Jorstad Creek—Inside and westerly of a line projected from((~~: 47°33'15" N. Lat. 123°01'42" W. Long.~~)) 47.5547°, -123.0289°; thence to ((~~47°32'54" N. Lat. 123°01'06" W. Long.~~)) 47.5483°, -123.0183°; thence to ((~~47°32'54" N. Lat. 123°01'48" W. Long.~~)) 47.5483°, -123.0300°; thence to ((~~47°31'00" N. Lat. 123°01'48" W. Long.~~)) 47.5167°, -123.0300°; then true west to shore.

(e) Dosewallips Delta—Inside and westerly of lines projected from((~~: 47°41'03" N. Lat. 122°53'57.5" W. Long.~~)) 47.6842°, -122.8993°; thence to ((~~47°41'03" N. Lat. 122°52'24" W. Long.~~)) 47.6842°, -122.8733°; thence to ((~~47°42'43.5" N. Lat. 122°52'24" W. Long.~~)) 47.7121°, -122.8733°; thence to ((~~47°42'43.5" N. Lat. 122°53'10" W. Long.~~)) 47.7121°, -122.8861°.

(f) Point Whitney (including all portions of seawater ponds, lagoon, and shellfish cultivation facilities)—Inside and southerly of lines projected from((~~: 47°45'43" N. Lat. 122°51'4.7" W. Long.~~)) 47.7619°, -122.8513°; thence to ((~~47°45'52" N. Lat. 122°51'4.7" W. Long.~~)) 47.7644°, -122.8513°; thence to ((~~47°45'52" N. Lat. 122°51'18" W. Long.~~)) 47.7644°, -122.8550°; thence to ((~~47°45'45" N. Lat. 122°51'18" W. Long.~~)) 47.7625°, -122.8550°.

(g) Duckabush River Mouth—Inside and westerly of a line projected from((~~: 47°38'46" N. Lat. 122°54'08" W. Long.~~)) 47.6467°, -122.9044°; thence to ((~~47°37'55" N. Lat. 122°56'25" W. Long.~~)) 47.6319°, -122.9417°.

(h) East Dabob Bay—Inside and easterly of a line projected from 47.8283°, -122.7997°; thence to 47.8264°, -122.8050°; thence to 47.8131°, -122.7989°; thence to the shore at 47.8136°, -122.7958°.

(i) Guillemot Cove—Inside and easterly of lines projected from 47.6119°, -122.8848°; thence to 47.6119°, -122.9208°; thence to 47.6075°, -122.9225°; thence returning to shore at 47.6069° latitude.

(j) Bywater Bay—Inside and northerly of a line projected true east from latitude 47.8819° (47°52'55" N) to the west shoreline of Hood Head.

(16) Henderson Inlet—South Bay—Inside and southerly of a line commencing at ~~((a point))~~ 47.1268°, -122.8412° on the west shore of Henderson Inlet ~~((where the south line of Section 17, Twp 19 N R 1 WWM intersects the shoreline)),~~ thence projected true east across Henderson Inlet to the east shoreline.

(17) Birch Bay—Inside and bounded by a line projected from ~~((+ 48°53'59" N. Lat. 122°46'33.9" W. Long.))~~ 48.8997°, -122.7761°; thence following the shoreline northeasterly ~~((along the shoreline to 48°54'37.7" N. Lat. 122°45'7.65" W. Long.))~~ to 48.9105°, -122.7521°; thence to ~~((48°54'56" N. Lat. 122°45'31" W. Long.))~~ 48.9156°, -122.7586°; thence to ~~((48°54'10" N. Lat. 122°46'53.54" W. Long.))~~ 48.9028°, -122.7815°; thence returning to the origin at 48.8997°, -122.7761°.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-340-130, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047. WSR 14-07-092 (Order 14-63), § 220-72-011, filed 3/18/14, effective 4/18/14. Statutory Authority: RCW 77.12.047. WSR 05-01-113 (Order 04-318), § 220-72-011, filed 12/15/04, effective 1/15/05; WSR 03-10-041 (Order 03-86), § 220-72-011, filed 4/30/03, effective 5/31/03. Statutory Authority: RCW 75.08.080. WSR 97-08-078 (Order 97-56), § 220-72-011, filed 4/2/97, effective 5/3/97.]

## WSR 22-06-018

## PERMANENT RULES

## CENTRAL WASHINGTON UNIVERSITY

[Filed February 22, 2022, 9:53 a.m., effective March 25, 2022]

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

Purpose: Updating and amending student conduct code under chapter 106-125 WAC, and related procedural amendments under WAC 106-108-050.

Citation of Rules Affected by this Order: New WAC 106-125-200, 106-125-201, 106-125-205, 106-125-210, 106-125-215, 106-125-220, 106-125-225, 106-125-230, 106-125-235, 106-125-240 and 106-125-245; and amending WAC 106-08-050, 106-125-010, 106-125-020, 106-125-030, 106-125-040, 106-125-045, 106-125-050, 106-125-055, 106-125-060, 106-125-070, 106-125-075, 106-125-080, 106-125-085, and 106-125-090.

Statutory Authority for Adoption: RCW 28B.35.120.

Adopted under notice filed as WSR 21-21-082 on October 18, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 11, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 11, Amended 14, 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: February 18, 2022.

Kimberly J. Dawson  
Rules Coordinator

**OTS-3395.1**

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-08-050 Brief adjudicative proceedings.** (1) The university will conduct brief adjudicative proceedings in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted.

(2) Except as otherwise provided by rule or as determined in a particular case by the university president (or designee), brief adjudicative proceedings shall be used to hear appeals of administrative actions relating to the following matters:

- (a) Parking and traffic citations;
- (b) Outstanding student debts or employee overpayments;
- (c) Student residency determinations;
- (d) Library fines;
- (e) Challenges to contents of student education records;

(f) ~~((Loss))~~ Removal from student housing or denial of student eligibility ~~((for participation))~~ to participate in ~~((university))~~ intercollegiate athletics;

(g) Student disciplinary action as defined under the student conduct code, except for a decision referring the matter to the student conduct council, a decision imposing a sanction of conduct suspension in excess of ten instructional days, or a decision imposing a sanction of conduct expulsion; or

(h) Administrative decisions regarding mandatory tuition and/or fee waivers.

(3) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt and fair resolution of the matter.

(4) The administrative record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. Such records shall be maintained as the official record of the proceedings.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-08-050, filed 11/23/15, effective 12/24/15. Statutory Authority: RCW 28B.35.120(12). WSR 91-22-037 (Order CWU AO 68), § 106-08-050, filed 10/31/91, effective 12/1/91.]

### OTS-3396.3

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-010 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) **Advisor of choice.** The "advisor of choice" is the person selected by a complainant or respondent to provide informal advice and support at any stage of a disciplinary proceeding under this student code. Except as otherwise provided in these rules, the role of the advisor of choice does not include representation of a party.

(2) **Complainant.** A "complainant" for purposes of this student code means any person who is the alleged victim or target of prohibited student conduct, whether or not such person has made an actual complaint.

~~((2))~~ (3) **Conduct officer.** The "conduct officer" or "student conduct officer" is the university official designated by the university to be responsible for initiating disciplinary action for alleged violations of this code.

~~((3))~~ (4) **Conduct review officer.** The "conduct review officer" is the university official designated by the university to hear appeals of disciplinary action conducted as brief adjudicative proceedings and to enter final decisions in proceedings heard by the student conduct council.

~~((4))~~ (5) **Consent.** The term "consent" for purposes of this code means knowing, voluntary, and clear permission and agreement, by actual words or conduct, to engage (or to continue engaging) in sexual activity. A person may be incapable of giving consent, or of diminish-

ed capacity to consent, by reason of age, threat or intimidation, lack of opportunity to consent, physical or mental impairment, drug or alcohol consumption, unconsciousness, or other cause. A person engages in nonconsensual sexual activity if the person knows, or reasonably should know, that the other person is of diminished capacity to consent or has in any way manifested lack of consent. Intoxication is not a defense against allegations of nonconsensual sexual activity.

~~((5))~~ (6) Day. The term "day," unless otherwise qualified, means "calendar day." The qualified term "instructional day" means any day within an academic term that the university is open for business, excluding weekends and holidays.

~~((5))~~ (7) Dean of student success. The term "dean" or "dean of student success" means the chief student affairs officer of the university and includes any acting or interim dean designated by the president to perform the functions and duties of the dean under this student code.

~~((6))~~ (8) Disciplinary action. The term "disciplinary action" means the decision of the designated university official regarding alleged violations of the student code and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include a summary suspension.

~~((7))~~ (9) Filing and service.

(a) **Filing.** The term "filing" means the delivery to the designated university official of any document that is required to be filed under this code. A document is filed by hand delivering it or by mailing it to the university official (or the official's assistant) at the official's office address. Filing is complete upon actual receipt during office hours at the office of the designated official.

(b) **Service.** The term "service" means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **Electronic filing and service.** Unless otherwise provided, filing or service may be accomplished by electronic mail.

~~((8))~~ (10) Party. A "party" to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment.

~~((9))~~ (11) Preponderance of evidence. The term "preponderance of the evidence" is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

~~((10))~~ (12) Respondent. A "respondent" is a student against whom disciplinary action is initiated.

~~((11))~~ (13) Service. See "Filing and service."

~~((12))~~ (14) Student. The term "student" includes all persons taking courses at or through the university, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

~~((13))~~ (15) University premises. "University premises" shall include all campuses and electronic presences of the university, wher-

ever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the university.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-010, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-020 Prohibited student conduct.** Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this section means "without limitation."

(1) **Academic dishonesty.** The term "academic dishonesty" for purposes of this student code includes cheating, plagiarism, and fabrication. Nothing in this student code shall be construed as limiting the authority of faculty and academic administrators to assign academic consequences for these or other forms of academic misconduct.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment, including collaboration without authority.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an academic assignment.

(2) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** An "alcohol violation" includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable university policies.

(b) **Cannabis/marijuana.** A "cannabis" or "marijuana violation" includes using, possessing, delivering, selling, or being under the influence of ((marijuana)) cannabis or the psychoactive compounds found in ((marijuana)) cannabis and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on university premises or in connection with university activities.

(c) **Drug.** A "drug violation" includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A "tobacco violation" means smoking or using tobacco products, electronic smoking devices (including e-cigarettes and vape

pens), or other smoking devices in any area of university premises where smoking or tobacco use is prohibited in accordance with public law and university policy.

(3) **Disruptive or obstructive conduct.** The term "~~disruptive~~ (~~or~~) or obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the university. The term includes disorderly conduct, breach of the peace, violation of local or university noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of university investigations or disciplinary proceedings, including interfering with or retaliating against any witness, party, or other participant.

(4) **Ethics violations.** An "ethics violation" includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or university policy relating to the ethical use of university resources.

(5) **Failure to comply.** The term "failure to comply" means refusing to obey the lawful directive of a university official or authorized university body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(6) **False or deceptive conduct.** The term "~~false~~ (~~or~~) or deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of university records, furnishing false or misleading information to the university, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(7) **Harassment.** The term "harassment" or "discriminatory harassment" means unwelcome and objectively offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently ~~(serious)~~ severe, pervasive, or persistent as to ~~(deny or limit)~~ have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s). Protected status includes a person's actual or perceived race, color, national origin, gender, disability, or other status protected by law. See "Sexual misconduct" for the definition of "sexual harassment."

(8) **Hazing.** "Hazing" includes any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes or is likely to cause the destruction or removal of public or private property or that causes or is likely to cause bodily danger or physical harm, or serious mental or emotional harm, to any student or other person.

(9) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, ~~(harassment, bullying, stalking,)~~ invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's

rights. The term includes personal offenses committed by electronic means.

(10) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of university property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and university trademarks.

(11) **Relationship violence.** The term "relationship violence" includes "domestic violence" and "intimate partner violence."

(a) **Domestic violence.** The term "domestic violence" means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated against a current or former spouse or intimate partner, current or former cohabitant, a person with whom one shares a child in common, or a person with whom one resides, including roommates.

(b) **Intimate partner violence.** The term "intimate partner violence," also known as dating violence, means the infliction of physical harm, bodily injury, or assault (or the objectively reasonable fear of such harm, injury, or assault), or stalking, perpetrated by a person against another with whom one is or has been in a social relationship of a romantic or intimate nature. The existence of such a relationship will be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(12) **Retaliation.** The term "retaliation" means harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other university policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a university investigation or disciplinary proceeding.

~~((12))~~ (13) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any university policy, equipment, or procedure relating to the health, safety ~~((and))~~, or security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

~~((13))~~ (14) **Sexual misconduct.** The term "sexual misconduct" includes "sexual harassment," "sexual ~~((intimidation))~~ exploitation," and "sexual violence."

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome and objectively offensive conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is directed at a person because of such person's sex or gender and that is sufficiently ~~((serious as to deny or limit, based on sex,))~~ severe, pervasive, or persistent as to have the effect of denying, limiting, or unreasonably interfering with the ability of a student to participate in or benefit from the university's educational program, or that creates an intimidating, hostile, or offensive environment for any campus community member(s).

(b) **Sexual ~~((intimidation))~~ exploitation.** The term "sexual ~~((intimidation))~~ exploitation" means ~~((threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking),))~~ taking sexual

advantage of another, without consent, for the gratification of one-self or any third person(s). The term includes voyeurism, indecent exposure, ((~~or~~)) the nonconsensual recording of nudity or sexual activity ((~~or~~)) where there is a reasonable expectation of privacy (or the nonconsensual distribution of such recording), inducing another person to engage in sexual activity for payment or other benefit, and knowingly exposing another to a sexually transmitted infection. ((Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.))

(c) **Sexual violence.** The term "sexual violence" ((incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, and sexual coercion. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

((14)) includes "nonconsensual sexual contact" and "nonconsensual sexual intercourse."

(i) **Nonconsensual sexual contact.** The term "nonconsensual sexual contact" means any nonaccidental touching (including touching with any object) of the intimate parts of another person's body, clothed or unclothed, including a person's mouth, breasts, genital area, and buttocks, without the consent of the other person. The term also includes nonconsensual touching in a sexual manner of one's own intimate body parts, nonconsensual touching of another with one's own intimate body parts, removing another person's clothing without consent, or inducing a person without consent to touch their own or another person's intimate body parts.

(ii) **Nonconsensual sexual intercourse.** The term "nonconsensual sexual intercourse" includes any penetration, however slight, with any body part or object, of another person's mouth, vagina, or anus without the consent of the other person. The term also includes nonconsensual oral sex, with or without penetration.

(15) **Stalking.** The term "stalking," including cyberstalking, means a course of conduct, directed at a specific person, that involves repeatedly contacting, harassing, or following the person for no legitimate purpose, causing the person to have the same fear for the person's safety, the safety of others, or the security of property that a reasonable person in the same situation would experience under all the circumstances.

(16) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the university or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

((15)) (17) **University policy violations.** The term "policy violation" means the violation of any ((applicable law or)) university policy or applicable law governing the conduct of students as members of the university community, including university policies governing nondiscrimination, alcohol and drugs, computer use, copyright, campus health and safety, and parking and traffic.

~~((16))~~ (18) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on university premises of any firearm or other dangerous weapon in violation of public law or university policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-020, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-030 Disciplinary sanctions.** The university may impose any of the following disciplinary sanctions for violations of this student code. Violations must be proved by a preponderance of the evidence.

(1) **Conduct reprimand.** A "conduct reprimand" is a written notice formally censuring a student for a student code violation and providing notice that a repeated violation will subject the student to more severe disciplinary action.

(2) **Conduct probation.**

(a) The term "conduct probation" means a specified period of time during which a student's continued enrollment will be conditioned on the student's compliance with specified requirements or restrictions. The probation may be for a limited term or may extend for the duration of the student's attendance at the university, depending on the nature and seriousness of the code violation(s). The sanction of conduct probation may be imposed in the form of a deferred suspension.

(b) Conditions placed on a student's continued enrollment may include, without limitation, any one or more of the following requirements or restrictions:

(i) Compliance with applicable standards of conduct under the student code and university policies;

(ii) Restitution, defined as payment of compensation for damage or loss caused to the university or any person as a result of the student's misconduct, or the assessment of such fines as may be authorized under specific university policies for violations of those policies;

(iii) Restrictions on the student's contact with specified individuals or groups, which may include an order that the student refrain from having any communication with the specified persons;

(iv) Restrictions on the student's access to specified university premises and/or limitations on the student's participation in university activities, which may include removal from or reassignment of student housing or denial of eligibility to participate in intercollegiate athletics;

(v) A requirement that the student receive education or participate in training relating to the student's misconduct, which may include other educational sanctions assigned for the purpose of facili-

tating student development and learning as deemed appropriate to the offense;

(vi) A requirement that the student be professionally evaluated by a qualified health care provider who is approved by the university and who is authorized by the student to discuss the evaluation with designated university officials, together with a requirement that the student comply with treatment recommendations relating to the student's ability to maintain appropriate standards of conduct.

(c) A student's failure to comply with the conditions of the conduct probation may result in further disciplinary action including, but not limited to, disciplinary suspension or permanent dismissal.

(3) **Conduct suspension.** A "conduct suspension" means a temporary dismissal from the university and the suspension of student status for a specified period of time with no refund of tuition or fees. Reenrollment following a disciplinary suspension may be conditioned on any of the requirements or restrictions that may apply to a conduct probation.

(4) **Conduct dismissal.** The term "conduct dismissal" means permanent expulsion from the university with no refund of tuition or fees and may include an order trespassing the student from university premises. A sanction of conduct dismissal shall be recorded on the student's academic transcript.

(5) **Other sanctions.** The following additional sanctions for student code violations may be imposed as required or permitted by law or university policy.

(a) **Athletics eligibility.** A student athlete found in violation of WAC 106-125-020 (2)(c), relating to drug violations, shall be ineligible to participate in university athletics pursuant to RCW 69.41.340. Eligibility to participate in intercollegiate athletics may be denied based on violations of other student conduct prohibited under WAC 106-125-020.

(b) **~~(Parental)~~ Parent/guardian notification.** The university reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-030, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-040 Disciplinary action—Initiation.** (1) The student conduct officer will initiate disciplinary action by serving the student respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations or the issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violations(s).

(2) At the disciplinary meeting, the student conduct officer will review the allegations with the respondent and will afford the respondent an opportunity to respond. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) In a proceeding involving allegations of sexual misconduct or discriminatory harassment, the student conduct officer prior to taking disciplinary action will afford the complainant an opportunity to discuss the results of any investigation and the possible sanctions and/or conditions that could be imposed for the complainant's protection if the sexual misconduct or discriminatory harassment allegations are found to be substantiated.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) The conduct officer may dismiss the proceeding upon finding the allegations to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review, except as provided in proceedings involving allegations of sexual misconduct or discriminatory harassment.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 106-125-030. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) The conduct officer may refer the matter for disciplinary action by the student conduct council. Such referral shall be in writing, to the attention of the dean of student success, with a copy served on the respondent (and any complainant in a proceeding involving allegations of sexual misconduct or discriminatory harassment). The decision to refer shall not be subject to appeal or further review.

(5) Within (~~ten~~) 10 days of the initial disciplinary meeting, the conduct officer will serve the respondent (and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) with a written decision either dismissing or referring the matter or imposing disciplinary sanctions. If sanctions are imposed, the written decision will specify the conduct code provision(s) found to have been violated, will describe the facts and conclusions supporting the sanction(s), and will provide notice of any appeal rights.

(6) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether such allegations were substantiated and will describe any sanctions or conditions imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-040, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-045 Appeal and review procedures—General.** The following general rules apply to appeals or requests for further administrative review of disciplinary action at any stage of a student disciplinary proceeding.

(1) **Parties.** The parties to an appeal or review proceeding shall be the respondent, any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations, and the student conduct officer.

(2) **Filing of appeals.**

(a) **Appeal periods.** An appeal or request for review of disciplinary action must be filed with the designated university official within the applicable time period as further specified in these rules.

(b) **Contents of appeal.** A party's written notice of appeal or request for review must explain why the party disagrees with the disciplinary decision and what relief or remedy the party is requesting. The appeal or request for review must address one or more of the following grounds:

(i) **Insufficient evidence.** The disciplinary action taken was not supported by a preponderance of the evidence.

(ii) **New evidence.** New evidence not available at the time the disciplinary action was taken should result in a different outcome.

(iii) **Procedural or other error.** The disciplinary action was taken in violation of prescribed procedures or was based on an erroneous interpretation or application of the student conduct code.

(iv) **Disproportionate outcome.** The disciplinary action taken was not proportionate to the student conduct violation(s) alleged.

(c) **Failure to appeal.** The failure of a party to file a timely appeal or request for review at any stage of the proceeding waives that party's right to appeal. However, in a proceeding involving sexual misconduct or discriminatory harassment allegations, if any party appeals, the university official receiving the appeal or request for review will notify the other parties and will afford each party the opportunity to participate in the appeal or review proceeding.

(3) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a conduct suspension of any length (~~or imposing a~~), removal from student housing, or conduct expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(4) **Reviewing authority.**

(a) Appeals of disciplinary action taken by the student conduct officer will be heard by the conduct review officer or student conduct council as further provided in these rules.

(b) Appeals of disciplinary action taken by the conduct review officer in a brief adjudicative proceeding will be heard by the dean of student success (or designee) as further provided in these rules.

(c) Appeals of disciplinary action (~~(recommended)~~) imposed by the student conduct council will be heard by the conduct review officer as further provided in these rules.

(5) **Ex parte communications.** Reviewing authorities (the conduct review officer, student conduct council members, and the dean) may not communicate with any of the parties regarding an appeal without providing notice and an opportunity for all parties to participate.

(6) **Disqualification.** Reviewing authorities may not participate in a proceeding in which they:

(a) Are a complainant or witness;

(b) Have a direct or personal interest, prejudice, or bias; or

(c) Have previously acted in the same proceeding in another capacity.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-045, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-050 Disciplinary action—Appeals. (1) Respondent.**

The student respondent may appeal the disciplinary action of the student conduct officer in accordance with the following rules:

(a) The respondent may appeal disciplinary action imposing a conduct reprimand, conduct probation, ~~((ten))~~ conduct suspension not in excess of ~~((ten))~~ 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 10 days of service of the disciplinary decision.

(b) The respondent may appeal disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within ~~((twenty))~~ 20 days of service of the disciplinary decision.

(2) **Complainant.** The complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations may appeal the disciplinary action of the student conduct officer with respect to such allegations in accordance with the following rules:

(a) The complainant may appeal disciplinary action dismissing the proceeding or imposing a conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days by filing a written notice of appeal with the conduct review officer within ~~((ten))~~ 10 days of service of the disciplinary decision.

(b) The complainant may appeal disciplinary action imposing a conduct suspension in excess of ~~((ten))~~ 10 days or a conduct dismissal by filing a written notice of appeal with the conduct review officer within ~~((twenty))~~ 20 days of service of the disciplinary decision.

(3) If no appeal is filed within the applicable time period, the disciplinary action of the student conduct officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-050, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-055 Conduct review hearings—Initial decision. (1) Conduct review officer - Authority.**

(a) The conduct review officer will hear a respondent's appeal of disciplinary action imposing a conduct reprimand, conduct probation, ~~((ten))~~ conduct suspension not in excess of ~~((ten))~~ 10 days, removal from student housing, or denial of eligibility to participate in intercollegiate athletics.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the conduct review officer will hear a complainant's appeal of disciplinary action dismissing the sexual misconduct or discriminatory harassment allegations or imposing, with respect to such allegations, a conduct reprimand, conduct probation, or conduct suspension not in excess of ~~((ten))~~ 10 days.

(c) The conduct review officer shall have the same authority as the student conduct officer to dismiss a proceeding, to impose a disciplinary sanction of conduct reprimand, conduct probation, or conduct

suspension not in excess of (~~ten~~) 10 days, or to refer the matter for disciplinary action by the student conduct council.

(2) **Appeal hearing.** Appeals heard by the conduct review officer will be conducted as informal administrative hearings consistent with the rules for "brief adjudicative proceedings" under RCW 34.05.482 and WAC 106-08-050. The review officer shall provide each party an opportunity to explain the party's view of the matter.

(3) **Initial decision - Service.**

(a) Within (~~ten~~) 10 days of consideration of the appeal, the conduct review officer will serve an initial decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The initial decision will explain the reasons for the decision and will provide notice of any right to request further administrative review.

(b) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the initial decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(c) A decision by the conduct review officer to refer the appeal to the student conduct council is not subject to further administrative review.

(4) **Initial decision - Request for review.** The respondent (or any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations) may request administrative review of the initial decision by filing a written request for review with the dean of student success within (~~twenty-one~~) 21 days of service of the initial decision. If no request for review is filed, the initial decision of the conduct review officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-055, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-060 Conduct review hearings—Review of initial decision.** (1) Requests for review of the initial decision of the conduct review officer will be heard by the dean of student success (or designee). The dean shall have the same authority on review as the conduct review officer to take disciplinary action.

(2) The dean will review the hearing record and will afford the parties the opportunity to file written statements explaining their views of the matter. The dean may make any inquiries necessary to ascertain whether the proceeding should be referred to the student conduct council for a formal hearing.

(3) Within (~~twenty~~) 20 days of the date for the parties to submit written statements, the dean will serve a written review decision upon the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. The review decision will explain the reasons for the

decision and will provide a notice that judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any disciplinary action taken with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The review decision of the dean (or designee) shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-060, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-070 Student conduct council.** (1) The student conduct council shall consist of three (~~(students and two faculty members selected from a panel of eight full-time students and six faculty members holding the rank of assistant professor or above who are appointed to the panel in accordance with procedures established respectively by student government and the faculty senate)~~) university employees appointed by the university president or president's designee. The conduct council members will be (~~(randomly)~~) selected by the council advisor subject to availability and qualification in accordance with WAC 106-125-045(6). Additional (~~(students and faculty)~~) university employees may be selected to serve as alternate council members.

(2) The student conduct council shall elect a chair to preside over the hearing, and the dean of student success shall appoint a non-voting staff member as council advisor to convene and otherwise advise and assist the council.

(3) The student conduct council will hear appeals of disciplinary action imposing a conduct suspension in excess of (~~(ten)~~) 10 days or a conduct dismissal. The council will hear such other matters as may be referred to the council by the student conduct officer, conduct review officer, or dean of student success. The council shall have the authority to (~~(recommend dismissing)~~) dismiss a proceeding or to (~~(recommend imposing)~~) impose any of the disciplinary sanctions under WAC 106-125-030.

(4) Proceedings of the student conduct council shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-070, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-075 Student conduct council—Prehearing procedure.**

(1) The conduct council chair or advisor shall cause all parties to be served with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair or advisor may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The conduct council chair, assisted by the council adviser, is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The council chair or advisor may direct the parties prior to the hearing to exchange lists of potential witnesses and copies of exhibits that the parties reasonably expect to present to the council. Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The council chair or advisor in advance of the hearing may provide council members with copies of (a) any notice of disciplinary action (or referral to the council) and (b) any notice of appeal filed by the respondent (or any complainant). However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Any party may be accompanied at the hearing by (~~a nonattorney~~) an advisor of the party's choice. A respondent (or any complainant) may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four instructional days before the hearing, the attorney files and serves a notice of appearance. If the respondent (or complainant) is represented by an attorney, the student conduct officer may be represented by the university's assistant attorney general.

(6) The student conduct council may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-075, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-080 Student conduct council—Hearing procedure.** (1)

Upon the failure of any party to attend or participate in a hearing, the student conduct council may either:

(a) Proceed with the hearing; or

(b) Serve an order of default in accordance with RCW 34.05.440.

(2) Council hearings shall be closed to the public, unless all parties (including any complainant) agree on the record that all or parts of the proceeding may be open. The council chair shall determine any extent to which the hearing will be open. The chair may exclude from the hearing any person who disrupts the proceeding.

(3) The council advisor shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the advisor selects. Other recording shall be permitted in accordance with WAC 10-08-190. The advisor shall maintain the official record of the proceeding that is required by RCW 34.05.476. Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The council chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the council.

(5) The student conduct officer (or assistant attorney general) shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) The respondent and a complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations shall not directly question or cross-examine one another. All questions shall be directed to the council chair, who will act as an intermediary and pose questions on behalf of the parties. The council chair may reframe questions as to form or exclude questions on the grounds of relevance or privilege.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-080, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-085 Student conduct council—(~~Recommended~~) Initial decision.** (1) At the conclusion of the hearing, the student conduct council shall permit the parties to make closing arguments in whatever form the council wishes to receive them. The council may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within (~~twenty~~) 20 days following the later of the conclusion of the hearing or the receipt of closing arguments, the student conduct council shall issue (~~a recommended~~) an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The (~~recommended~~) decision shall contain findings on relevant issues of fact, conclusions concerning which, if any, provisions of the student code were found to be violated, and any (~~recommended~~) sanction(s) imposed. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The council chair shall cause the (~~recommended~~) initial decision to be served on the respondent, the student conduct officer, and any complainant in a proceeding involving sexual misconduct or discriminatory harassment allegations. In a proceeding involving sexual misconduct or discriminatory harassment allegations, the decision will state whether (~~the sexual misconduct~~) such allegations were substantiated and will describe any sanctions or conditions (~~recommended~~) imposed for the complainant's protection. The copy of the decision provided to a complainant will be redacted as needed to exclude

any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(4) The council advisor, upon receipt of a timely filed appeal, shall promptly transmit the council's (~~recommended~~) initial decision and the record of the proceedings for review by the conduct review officer who shall enter a final decision. If no appeal is timely filed, the initial decision of the student conduct council shall be the final decision.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-085, filed 11/23/15, effective 12/24/15.]

AMENDATORY SECTION (Amending WSR 15-24-054, filed 11/23/15, effective 12/24/15)

**WAC 106-125-090 Student conduct council—(~~Review~~) Appeal of (~~recommended~~) initial decision.** (1) The (~~recommended~~) initial decision of the student conduct council will be reviewed on appeal by the conduct review officer. The conduct review officer shall have the same authority on review as the student conduct officer to take disciplinary action.

(2) The review by the conduct review officer will be limited to the hearing record made before the student conduct council. The conduct review officer will afford all parties the opportunity to file written statements explaining why they agree or disagree with the council's (~~recommended~~) initial decision. The conduct review officer may notify the parties that the review will be limited to reviewing the specific issues raised by the parties.

(3) The conduct review officer will serve a written decision upon all parties (including the complainant in any proceeding involving sexual misconduct or discriminatory harassment allegations) within (~~twenty~~) 20 days of the date for the parties to submit written statements. The decision will adopt or modify the conduct council's (~~recommended~~) initial decision and will provide a notice that reconsideration and/or judicial review may be available.

(4) In a proceeding involving sexual misconduct or discriminatory harassment allegations, the review decision will explain the reasons for modifying any (~~recommended~~) disciplinary action imposed with respect to such allegations. The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential student information not relating to the sexual misconduct or discriminatory harassment allegations.

(5) The decision of the conduct review officer shall be final.

[Statutory Authority: RCW 28B.35.120 and chapter 34.05 RCW. WSR 15-24-054, § 106-125-090, filed 11/23/15, effective 12/24/15.]

**SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES**NEW SECTION

**WAC 106-125-200 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106 (the "Title IX Final Rule"). To the extent these supplemental hearing procedures conflict with the university's standard disciplinary procedures, WAC 106-125-005 through 106-125-090, these supplemental procedures shall take precedence.

[]

NEW SECTION

**WAC 106-125-201 Revocation by operation of law.** If any portion of the Title IX Final Rule is stayed or held invalid by a court of law, then the invalidated elements of the policy will be deemed revoked as of the publication date of the opinion or order.

[]

NEW SECTION

**WAC 106-125-205 Prohibited conduct under Title IX.** Pursuant to RCW 28B.35.120(12) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. § 1681, the university may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment." For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) **Quid pro quo harassment.** A student employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct.

(2) **Hostile environment harassment.** Hostile environment harassment, defined as unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's educational programs or activities, or employment.

(3) **Sexual assault.** Sexual assault includes the following conduct:

(a) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal

penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

(d) **Statutory rape.** Consensual sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

(4) **Domestic violence.** Domestic violence, defined as physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) **Dating or intimate partner violence.** Dating or intimate partner, defined as physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) **Stalking.** The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or suffer substantial emotional distress.

[]

#### NEW SECTION

**WAC 106-125-210 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a university educational program or activity;

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure; and

(d) At the time of filing a formal complaint, the complainant was participating or attempting to participate in the educational program or activity.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the university.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (d) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the university from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the student conduct code under WAC 106-125-020.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[]

#### NEW SECTION

**WAC 106-125-215 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct council and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
  - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
  - (ii) An advisor may be an attorney; and
  - (iii) The university will appoint the party an advisor of the university's choosing at no cost to the party, if the party fails to do so; and
- (f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

**WAC 106-125-220 Student conduct council.** For purposes of this supplemental Title IX procedure, the student conduct council shall consist of three university employees appointed by the university president (or designee) in accordance with WAC 106-125-070. The university may request an administrative law judge (ALJ) from the office of administrative hearings or other trained hearing officer to serve as the presiding officer in conducting the Title IX hearing.

[]

NEW SECTION

**WAC 106-125-225 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct council will send a hearing notice to all parties, in compliance with WAC 106-125-075. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the conduct council chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the university intends to offer the evidence at the hearing.

[]

NEW SECTION

**WAC 106-125-230 Rights of parties.** (1) The university's student conduct council hearing procedures, WAC 106-125-075, 106-125-080, and 106-125-085, and this supplemental procedure shall apply equally to all parties.

(2) The university bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the university's choosing on the party's behalf at no expense to the party.

[]

NEW SECTION

**WAC 106-125-235 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) The conduct council chair shall review all questions for relevance and shall explain on the record the chair's reasons for excluding any question based on lack of relevance. Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(2) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(3) Unless this rule is abrogated by operation of law pursuant to WAC 106-125-201, if a party or witness does not submit to cross-examination during the live hearing, the conduct council must not rely on any statement by that party or witness in reaching a determination of responsibility.

(4) Except as abrogated by operation of law pursuant to WAC 106-125-201, the conduct council may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(5) The conduct council shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

**WAC 106-125-240 Initial decision.** (1) In addition to complying with WAC 106-125-085, the student conduct council will be responsible for conferring and drafting an initial decision that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the conduct council's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the university's education programs or activities; and

(h) Describes the appeal process for review of the conduct council's decision by the university's conduct review officer under WAC 106-125-090.

(2) The conduct council chair will serve the initial decision on the parties simultaneously.

[]

#### NEW SECTION

**WAC 106-125-245 Appeal of initial decision.** (1) The parties shall have the right to appeal the initial decision of the student conduct council in accordance with the appeal procedures and timelines under WAC 106-125-045.

(2) The initial decision of the student conduct council shall be reviewed on appeal by the conduct review officer in accordance with this section and the appeal procedures under WAC 106-125-090.

(3) The conduct review officer will prepare a written review decision determining whether the grounds for appeal have merit, providing the rationale for this conclusion, and determining whether the disciplinary sanction(s) and condition(s) imposed in the initial decision are affirmed, vacated, or modified, and, if modified, setting forth any new disciplinary sanction(s) or condition(s).

(4) The conduct review officer shall serve the conduct review decision on the parties simultaneously.

(5) The decision of the conduct review officer shall be final.

[]

## WSR 22-06-035

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed February 23, 2022, 4:13 p.m., effective March 26, 2022]

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

Purpose: The agency amended these rules to extend the program through December 31, 2023. Additionally, the agency removed age limits and dual eligibility exclusions. The enhanced rate includes an additional adult prophylaxis, an additional fluoride varnish application, two periodic exams, and two silver diamine fluoride treatments.

Citation of Rules Affected by this Order: Amending WAC 182-535-1270.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-03-091 on January 18, 2022.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

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

Date Adopted: February 23, 2022.

Wendy Barcus  
Rules Coordinator

## OTS-3505.3

AMENDATORY SECTION (Amending WSR 18-24-077, filed 11/30/18, effective 1/1/19)

**WAC 182-535-1270 Oral health connections pilot project.** (1) The oral health connections pilot project is effective for dates of service from January 1, 2019, through December 31, ~~((2021))~~ 2023.

(2) The purpose of the oral health connections pilot project is to test the effect that enhanced oral health services have on the overall health of diabetic or pregnant medicaid clients receiving services in Cowlitz, Spokane, and Thurston counties.

(3) To be eligible for the oral health connections pilot project, a client must ~~((be))~~:

(a) ~~((Age twenty-one to sixty-four;~~

~~(b) Pregnant, diabetic, or both)) Be diabetic and age 21 or older; or~~

(b) Be pregnant and 16 years of age or older; and

(c) Be receiving services under subsection (6) of this section in Cowlitz, Spokane, or Thurston counties; and

(d) Be referred by a nondental primary health care provider, managed care organization, or a designated community organization to a qualified oral health connections pilot project dental provider. For the purposes of this section, a designated community organization is defined as an auxiliary group or groups that partner with the agency and Arcora foundation to implement the oral health connections pilot project or provide an attestation showing the client has been diagnosed with diabetes or pregnancy, or both.

(4) A client who qualifies for the oral health connections pilot project due to pregnancy may continue receiving services through the duration of the maternity cycle as defined in WAC 182-533-0315, but must ~~((actually))~~ be pregnant at the start of services.

(5) The following are excluded from the oral health connections pilot project:

(a) Family planning only ~~((and TAKE CHARGE))~~ programs under chapter 182-532 WAC; and

(b) Medical care services (MCS) program under WAC 182-508-0005 ~~((and~~

~~(c) Clients who are enrolled in both medicaid and medicare))~~.

(6) Under the oral health connections pilot project, the medicaid agency pays an enhanced rate for the following services:

(a) One comprehensive oral exam, per client, per provider in a five-year period;

(b) One periodic exam, per client, per provider, every six months;

(c) One complete series of intraoral radiographic images per client in a three-year period;

~~((e))~~ (d) Four bitewing X-rays (radiographs) once per client in a ~~((twelve-month)) 12-month~~ period;

~~((d))~~ (e) One adult prophylaxis, per client, every six months;

(f) Periodontal scaling and root planing - Four or more teeth per quadrant, once per quadrant per client in a two-year period;

~~((e))~~ (g) Periodontal scaling and root planing - Three or more teeth per quadrant, once per quadrant per client in a two-year period; ~~((and~~

~~((f))~~ (h) Up to three additional periodontal maintenance visits in a ~~((twelve-month)) 12-month~~ period. At least ~~((ninety)) 90~~ days must elapse following periodontal scaling and root planing or at least ~~((ninety)) 90~~ days must elapse following initial periodontal maintenance, and then every ~~((ninety)) 90~~ days afterwards for a total of three additional periodontal maintenance visits per eligible client in a ~~((twelve-month)) 12-month~~ period;

(i) One fluoride varnish application, per client, every six months; and

(j) One silver diamine fluoride treatment, per tooth, per client, every six months.

(7) The services listed in subsection (6) of this section are the only services the agency pays at the enhanced rate. The agency pays for all other covered dental services at the standard rate.

(8) To receive the enhanced rate, dental providers must:

(a) Be enrolled to participate in the oral health connections pilot project;

(b) Meet the qualifications in WAC 182-535-1070;

(c) Provide the services in Cowlitz, Spokane, or Thurston counties; and

(d) Complete training designed specifically for the oral health connections pilot project.

(9) The agency assigns a special identifier to providers who complete the training in subsection (8)(d) of this section which allows them to receive the enhanced rate.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2017 c 1. WSR 18-24-077, § 182-535-1270, filed 11/30/18, effective 1/1/19.]

## WSR 22-06-050

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed February 24, 2022, 3:45 p.m., effective March 27, 2022]

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

Purpose: The department is amending WAC 458-20-261 to incorporate 2021 legislation SHB 1514 (2021) and its new statutory requirements for certain commute trip reduction incentives.

Citation of Rules Affected by this Order: Amending WAC 458-20-261 Commute trip reduction incentives.

Statutory Authority for Adoption: RCW 82.01.060.

Other Authority: RCW 46.74.010, 82.04.355, 82.08.0287, 82.12.0282, 82.16.047, 82.44.015, and 82.70.010.

Adopted under notice filed as WSR 22-01-214 on December 22, 2021.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: February 24, 2022.

Atif Aziz  
Rules Coordinator

## OTS-3537.1

AMENDATORY SECTION (Amending WSR 20-22-093, filed 11/3/20, effective 12/4/20)

**WAC 458-20-261 Commute trip reduction incentives.** (1) **Introduction.** This rule explains the various commute trip reduction incentives (~~that are available~~). RCW 82.04.355 and 82.16.047 (~~provide exemptions~~) exempt amounts received from providing ride sharing, or ride sharing for persons with special transportation needs, from business and occupation (B&O) tax and public utility tax (PUT) (on amounts received from providing commuter ride sharing and ride sharing for persons with special transportation needs). RCW 82.08.0287 and 82.12.0282 provide sales and use tax exemptions for sales or use of passenger motor vehicles as (~~ride-sharing~~) ride sharing vehicles. Finally, chapter 82.70 RCW provides commute trip reduction incentives in the form of B&O tax or PUT credits in connection with ride sharing, public transportation, car sharing, and nonmotorized commuting.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.

(b) "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running, or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.

(c) "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries and passenger-only ferry services for those public transportation benefit areas eligible to provide passenger-only ferry service under RCW 36.57A.200. RCW 82.70.010.

(d) (i) "Ride sharing" means a carpool or vanpool arrangement whereby one or more groups not exceeding 15 persons each, including the drivers, and not fewer than three persons, including the drivers, are transported in a passenger motor vehicle with a gross vehicle weight not exceeding 10,000 pounds. RCW 46.74.010(2). See subsection (4)(b) of this rule for increased minimum group size requirements in some circumstances. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010(6).

(ii) Ride sharing does not include transportation provided in the normal course of business by entities subject to chapters 46.72A (limousines), 48.177 (commercial transportation services), 81.66 (private, nonprofit transportation providers that receive compensation for transporting persons with special transportation needs), 81.68 (auto transportation companies), 81.70 (passenger charter and excursion carriers), and 81.72 (taxicabs) RCW, or offer peer-to-peer car sharing. "Peer-to-peer car sharing" means motor vehicle owners making their motor vehicles available for persons to rent for short periods of time.

(e) "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than 28 feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.

(i) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.

(ii) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.

(3) B&O tax and PUT exemptions for providing ((commuter)) ride sharing or ride sharing for persons with special transportation needs. RCW 82.04.355 and 82.16.047 provide B&O tax and PUT exemptions for

amounts received in the course of (~~commuter~~) ride sharing or ride sharing for persons with special transportation needs.

~~((a) What is "commuter ride sharing"? "Commuter ride sharing" means a carpool or vanpool arrangement, whereby one or more fixed groups:~~

~~(i) Not exceeding fifteen persons each, including the drivers; and~~

~~(ii) Either:~~

~~(A) Not fewer than five persons, including the drivers; or~~

~~(B) Not fewer than four persons, including the drivers, where at least two of those persons are confined to wheelchairs when riding; are transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence, and their places of employment or educational or other institutions. Each group must be in a single daily round trip where the drivers are also on the way to or from their places of employment or educational or other institutions. RCW 46.74.010.~~

~~(b) What is "ride sharing for persons with special transportation needs"? "Ride sharing for persons with special transportation needs" means an arrangement, whereby a group of persons with special transportation needs, and their attendants, is transported by a public social service agency or a private, nonprofit transportation provider, in a passenger motor vehicle as defined by the department of licensing to include small buses, cutaways, and modified vans not more than twenty-eight feet long. The driver need not be a person with special transportation needs. RCW 46.74.010.~~

~~(i) What is a "private, nonprofit transportation provider"? A "private, nonprofit transportation provider" is any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs. RCW 81.66.010.~~

~~(ii) Who are "persons with special transportation needs"? "Persons with special transportation needs" are those persons, including their personal attendants, who because of physical or mental disability, income status, or age, are unable to transport themselves or to purchase appropriate transportation. RCW 81.66.010.~~

~~(3)) (4) Retail sales tax and use tax exemptions on sales or use of passenger motor vehicles as ((ride-sharing)) ride sharing vehicles. RCW 82.08.0287 and 82.12.0282 provide retail sales tax and use tax exemptions for sales and use of passenger motor vehicles as ride-sharing vehicles. The following conditions apply to qualify for these exemptions:~~

~~(a) ((What are the requirements? To qualify for these exemptions,)) Minimum duration of usage. The passenger motor vehicles must be used(~~+~~~~

~~(i)) primarily for ((commuter)) ride sharing or ride sharing for persons with special transportation needs(~~+~~and~~

~~(ii) As ride-sharing vehicles for thirty-six)) for 36 consecutive months beginning from the date of purchase (retail sales tax exemption) and the date of first use (use tax exemption). If the vehicle is used as a ((ride-sharing)) ride sharing vehicle for less than ((thirty-six)) 36 consecutive months, the registered owner must pay the retail sales tax or use tax.~~

~~(b) ((Additional requirements in certain cases.)) Increased passenger requirements for vehicles not operated by a public transportation agency. If a vehicle is not operated by a public transportation~~

agency, the minimum group size is increased from three persons each to five persons each including the driver. RCW 82.08.0287 (2) (b) and 82.12.0282 (2) (b).

(c) **Qualifying jurisdictions.** Vehicles ((used primarily for commuter ride sharing)) must be operated within:

(i) A county, or a city or town within that county, which has a commute trip reduction plan under chapter 70A.94 RCW ((in order to be exempt from retail sales tax or use tax. In addition, for the exemptions to apply, at least one of the following conditions must apply:

(i) The vehicle is)); or

(ii) In other counties, where the vehicle is registered with, or operated by, a public transportation agency.

(d) **Ownership and operation.** The vehicle must be:

(i) Operated by a public transportation agency for the benefit of the general public;

(ii) ((The vehicle is)) Used by a major employer, as defined in RCW ((70A.94.524)) 70A.15.4010, as an element of its commute trip reduction program for their employees; or

(iii) ((The vehicle is)) Owned and operated by individual employees and ((must be)) registered either with the employer as part of its commute trip reduction program or with a public transportation agency ((serving the area where the employees live or work. Individual employee)).

(e) **Certification.**

(i) Individual employee owned and operated motor vehicles require certification that the vehicle is registered with a major employer or a public transportation agency((-)); and

(ii) Major employers who own and operate motor vehicles for their employees must certify that the commute ((ride sharing)) ride sharing arrangement conforms to a carpool or vanpool element contained within their commute trip reduction program.

((4)) **(5) B&O tax or PUT credit for ride sharing, public transportation, car sharing, or nonmotorized commuting.** RCW 82.70.020 provides a credit against B&O tax or PUT liability for amounts paid to or on behalf of employees for ride sharing ((in vehicles carrying two or more persons)), for using public transportation, for using car sharing, or for using nonmotorized commuting. The credit is equal to the amount paid to or on behalf of each employee multiplied by ((fifty)) 50 percent, but may not exceed ((sixty dollars)) \$60 per employee per fiscal year. No refunds will be granted for unused credits.

(a) **Who is eligible for this credit?**

(i) Employers in Washington are eligible for this credit, for amounts paid to or on behalf of their own or other employees, as financial incentives to such employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(ii) Property managers who manage worksites in Washington are eligible for this credit, for amounts paid to or on behalf of persons employed at those worksites, as financial incentives to such persons for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(b) ((**What is "ride sharing"?** "Ride sharing" means a carpool or vanpool arrangement, whereby a group of at least two but not exceeding fifteen persons, including the driver, is transported in a passenger motor vehicle with a gross vehicle weight not exceeding ten thousand pounds, excluding any special rider equipment. The transportation must be between their places of residence or near such places of residence,

and their places of employment or educational or other institutions. The driver must also be on the way to or from his or her place of employment or educational or other institution. "Ride sharing" includes ride sharing on Washington state ferries. RCW 82.70.010.

~~(c) **What is "public transportation"?** "Public transportation" means the transportation of packages, passengers, and their incidental baggage, by means other than by charter bus or sight-seeing bus, together with the necessary passenger terminals and parking facilities or other properties necessary for passenger and vehicular access to and from such people moving systems. "Public transportation" includes passenger services of the Washington state ferries. RCW 82.70.010.~~

~~(d) **What is "car sharing"?** "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis. RCW 82.70.010.~~

~~(e) **What is "nonmotorized commuting"?** "Nonmotorized commuting" means commuting to and from the workplace by an employee, by walking or running or by riding a bicycle or other device not powered by a motor. "Nonmotorized commuting" does not include teleworking, which is a program where work functions normally performed at a traditional workplace are instead performed by an employee at his or her home, at least one day a week for the purpose of reducing the number of trips to the employee's workplace. RCW 82.70.010.~~

~~(f)) **What is the credit amount?** The amount of the credit is equal to the amount paid to or on behalf of each employee multiplied by ~~((fifty))~~ 50 percent, but may not exceed ~~((sixty dollars))~~ \$60 per employee per fiscal year. RCW 82.70.020.~~

~~((g)) **(c) What is a "fiscal year"?** A "fiscal year" begins ~~((at))~~ on July 1st of one year and ends on June 30th of the following year.~~

~~((h)) **(d) When will the credit expire?** The credit program is scheduled to expire July 1, 2024. No credit may be claimed after June 30, 2024.~~

~~((i)) **(e) What are the limitations of the credit?**~~

~~(i) The credit may not exceed the amount of B&O tax or PUT that would otherwise be due for the same fiscal year.~~

~~(ii) A person may not receive credit for amounts paid to or on behalf of the same employee under both B&O tax and PUT.~~

~~(iii) A person may not take a credit for amounts claimed for credit by other persons.~~

~~(iv) The total credit granted to a person under both B&O tax and PUT may not exceed ~~((one hundred thousand dollars))~~ \$100,000 for a fiscal year.~~

~~(v) The total credit granted to all persons under both B&O tax and PUT may not exceed ~~((two million seven hundred fifty thousand dollars))~~ \$2,750,000 in any fiscal year.~~

~~(vi) No credit or portion of a credit denied, because of exceeding the limitations in (i), (iv), or (v) of this subsection, may be used against tax liability for other fiscal years.~~

~~(vii) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account (RCW 47.66.070) created by chapter 361, Laws of 2003 are terminated.~~

~~((j)) **(f) What are the credit procedures?**~~

~~(i) Persons applying for the credit must complete the commute trip reduction credit annual application. The application must be electronically filed and received by the department between January 1st and January 31st, following the calendar year in which the appli-~~

cant made incentive payments. The commute trip reduction credit annual application is available through the business's "My DOR" account on the department's website at dor.wa.gov.

(ii) The department must (~~(make a determination on an)~~) approve or deny a completed application within (~~(sixty)~~) 60 days of the January 31st deadline. The department must (~~(disapprove)~~) deny an application not received by the January 31st deadline, except (~~(that)~~) the department may accept applications received up to (~~(fifteen)~~) 15 calendar days after the deadline if the application was not received because of circumstances beyond the control of the taxpayer. For what is considered circumstances beyond the control of a taxpayer, see WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. Once the application is approved and the tax credit is granted, the department is not allowed to increase the credit.

(iii) If the total amount of credit applied for by all approved applicants in a fiscal year exceeds the limitation as provided in (i)(v) of this subsection, the amount of credit allowed for all applicants must be proportionally reduced so as not to exceed the limit. The amount reduced may not be carried forward and claimed in subsequent fiscal years.

(iv) To claim a commute trip reduction tax credit, a person must file all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format is not filed until received by the department in an electronic format. (~~(For the purpose of this subsection,)~~) "Returns" has the same meaning as "return" in RCW 82.32.050.

(~~(\*)~~) (g) **Examples.** The following examples identify (~~(a number of)~~) facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(i) **Example 1.** An employer pays (~~(one hundred eighty dollars)~~) \$180 for a yearly bus pass for one employee. For another employee, the employer buys a bicycle helmet and bicycle lock for a total of (~~(fifty dollars)~~) \$50. (~~(These are)~~) The sum of these two amounts, \$230, is the total expenditure(~~(s)~~) during a fiscal year of amounts paid to, or on behalf of, employees in support of ride sharing, using public transportation, using car sharing, and using nonmotorized commuting. The employer may claim a credit of (~~(sixty dollars)~~) \$60 for the amount spent for the employee using the bus pass. Fifty percent of (~~(one hundred eighty dollars is ninety dollars)~~) \$180 is \$90, but the credit is limited to (~~(sixty dollars)~~) \$60 per employee. The employer may claim a credit of (~~(twenty-five dollars (fifty percent of fifty dollars))~~) \$25 (50 percent of \$50) for the amount spent for the employee who bicycles to work. Even though (~~(fifty)~~) 50 percent of (~~(two hundred thirty dollars,)~~) \$230 (the total amount spent on both employees), works out to be less than (~~(sixty dollars)~~) \$60 per employee, the credit is computed by looking at actual spending for each employee and not by averaging the spending for both employees.

(ii) **Example 2.** An employer provides parking spaces for the exclusive use of (~~(ride-sharing)~~) ride sharing vehicles. Amounts spent for signs, painting, or other costs related to the parking spaces do not qualify for the credit. This is because the credit is for financial incentives paid to or on behalf of employees. While the parking spaces support the use of (~~(ride-sharing)~~) ride sharing vehicles, they are not financial incentives and do not involve amounts paid to or on behalf of employees.

(iii) (~~Example 3. As part of its commute trip reduction program, an employer pays the cab fare for an employee who has an emergency and must leave the workplace but has no vehicle available because he or she commutes by ride-sharing vehicle. The cab fare qualifies for the credit but is subject to the maximum credit limit of sixty dollars per employee.~~

(iv)) **Example ((4)) 3.** An employer pays the property manager for a yearly bus pass for one employee who works at the worksite managed by the property manager. The property manager in turn pays the amount received from the employer to a public transportation agency to purchase the bus pass. Either the employer or the property manager, but not both, may take the credit for this expenditure.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 20-22-093, § 458-20-261, filed 11/3/20, effective 12/4/20. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.70.020, 82.70.025, 82.70.040, and 82.70.900. WSR 16-04-035, § 458-20-261, filed 1/26/16, effective 2/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.70.020, 82.70.040, 82.70.900, 82.44.015, 82.08.0287, and 82.12.0282. WSR 15-03-019, § 458-20-261, filed 1/8/15, effective 2/8/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.70.020 and 82.70.040. WSR 14-13-096, § 458-20-261, filed 6/17/14, effective 7/18/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 06-01-026, § 458-20-261, filed 12/13/05, effective 1/13/06. Statutory Authority: RCW 82.32.300, 82.04.4453 and 82.16.048. WSR 00-11-097, § 458-20-261, filed 5/17/00, effective 6/17/00; WSR 99-08-035, § 458-20-261, filed 3/31/99, effective 5/1/99.]

WSR 22-06-054

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed February 25, 2022, 9:07 a.m., effective March 28, 2022]

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

Purpose: Repealing WAC 192-190-020 Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)?

Citation of Rules Affected by this Order: Repealing WAC 192-150-112 [192-190-020].

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. Under RCW 50.04.323(3), lump sum payments from certain retirement plans are not deducted from an individual's weekly benefit amount.

Adopted under notice filed as WSR 22-01-125 on December 13, 2021.

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

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

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

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

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

Date Adopted: February 25, 2022.

Dan Zeitlin  
Employment System Policy Director

OTS-3514.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-190-020      Are lump sum retirement payments deductible from my benefits (RCW 50.04.323)?

## WSR 22-06-061

## PERMANENT RULES

## STATE BOARD OF HEALTH

[Filed February 25, 2022, 4:30 p.m., effective March 28, 2022]

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

Purpose: Chapter 246-100 WAC, Communicable and certain other diseases. The purpose of this rule making is to revise chapter 246-100 WAC to assure [ensure] consistency with statutory requirements and protect public health and safety. Revisions include, but are not limited to: (1) Establishing reporting requirements and procedures for investigations for sexually transmitted diseases; (2) specifying behavior that endangers the public health; (3) defining specimens that can be obtained and tests that can be administered for sexually transmitted diseases, blood-borne pathogens, and other infections; (4) determining categories of employment that are at risk of substantial exposure to a blood-borne pathogen; and (5) defining what constitutes an exposure that presents a possible risk of transmission of a blood-borne pathogen.

During the 2020 legislative session, the legislature passed ESHB 1551, modernizing the control of certain communicable diseases. This bill modernizes the state's control of communicable disease laws by ending statutory HIV/AIDS exceptionalism, reducing HIV-related stigma, defelonizing HIV exposure, and removing barriers to HIV testing. The bill took effect June 11, 2020.

The board's CR-101 Preproposal statement of inquiry identified potential revisions to both chapter 246-100 WAC, Communicable and certain other diseases, and chapter 246-101 WAC, Notifiable conditions. Proposed changes related to ESHB 1551 for chapter 246-101 WAC were adopted under a separate rule-making process, as the notifiable conditions chapter was already open for revisions at the time of filing the CR-101 to implement ESHB 1551. Amendments to chapter 246-101 WAC were adopted by the board at its March 2021 public meeting and were limited to minor editorial revisions consistent with the changes in ESHB 1551. These changes can be found in WSR 21-11-040.

Citation of Rules Affected by this Order: New WAC 246-100-2031 and 246-100-2061; repealing WAC 246-100-208 and 246-100-209; and amending WAC 246-100-011, 246-100-021, 246-100-036, 246-100-070, 246-100-072, 246-100-202, 246-100-203, 246-100-204, 246-100-205, 246-100-206, 246-100-207, and 246-100-211.

Statutory Authority for Adoption: RCW 43.20.050, 70.24.130.

Adopted under notice filed as WSR 21-20-127 [and 21-24-104] on October 5, 2021 [and December 1, 2021].

Changes Other than Editing from Proposed to Adopted Version: WAC 246-100-010 was amended to include a new definition in subsection (22) for "practical means to prevent transmission" to further clarify applicability of WAC 246-100-203. WAC 246-100-021 was amended to clarify that instruction provided by health care providers must be culturally and linguistically appropriate. WAC 246-100-072 was amended to clarify that local health officials may contact or otherwise obtain information from health care providers for purposes of case investigation. WAC 246-100-202 was amended to clarify that local health officers must provide information on sexually transmitted infection (STI) prevention methods. WAC 246-100-203 was amended in response to public comment to further clarify that behaviors endangering the public health require a pattern of behaviors that do not include exposure in the eyes or interruption of the epidermis, which is based on the best available sci-

entific data. Further, this section was amended to clarify further that it does not apply when practical means to prevent transmission were taken; the proposed rule included similar language, but this amendment provides explicit clarification. This section was amended to clarify, based on public comment, that a health order to cease and desist certain behaviors requires a documented pattern of behavior. Additionally, amendments to this section clarify that providers are not required to conduct anonymous HIV testing, but when they do, testing must be consistent with certain provisions. WAC 246-100-2031 was amended to clarify further that a local health officer may only seek detainment of a person with an STI when there is reliable information suggesting the person continues to engage in behaviors that present an imminent danger to the public health. Further, the section was amended to clarify further that behaviors presenting an imminent danger to the public health exclude instances when the HIV infection is noninfectious. Based on the best available scientific data, multiple sections were amended to clarify that the introduction of blood, semen, or vaginal fluids to the eyes or an interruption of the epidermis does not constitute behavior endangering the public health (WAC 246-100-203), exposure presenting possible risk (WAC 246-100-206), or possible risk of transmission of a blood-borne pathogen (WAC 246-100-2061).

A final cost-benefit analysis is available by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-789-2358, TTY 711, email CommunicableDisease@sboh.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 2, Amended 12, Repealed 2.

Number of Sections Adopted at the 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: January 12, 2022.

Michelle A. Davis  
Executive Director

#### OTS-3241.4

AMENDATORY SECTION (Amending WSR 18-23-056, filed 11/15/18, effective 12/16/18)

**WAC 246-100-011 Definitions.** The definitions in this section apply throughout chapter 246-100 WAC unless the context clearly requires otherwise:

(1) (~~"Acquired immunodeficiency syndrome (AIDS)" means illness, disease, or conditions defined and described by the Centers for Disease Control, U.S. Public Health Service, Morbidity and Mortality~~

Weekly Report (MMWR), April 11, 2014, Volume 63, Number RR-03. A copy of this publication is available for review at the department and at each local health department.

~~(2) "HIV counseling" means counseling directed toward:~~

~~(a) Increasing the individual's understanding of acquired immunodeficiency syndrome; and~~

~~(b) Assessing the individual's risk of HIV acquisition and transmission; and~~

~~(c) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection.~~

~~(3)) "Anonymous HIV testing" means that the name or identity of the ((individual)) person tested for HIV will not be recorded or linked to the HIV test result. ((However, once the individual testing positive receives HIV health care or treatment services, reporting of the identity of the individual to the state or local public health officer is required.~~

~~(4)) (2) "Blood-borne pathogen" means a pathogenic microorganism that is present in human blood and can cause disease in humans, including hepatitis B virus, hepatitis C virus, human immunodeficiency virus, and syphilis.~~

~~(3) "Board" means the Washington state board of health.~~

~~((5)) (4) "Case" means a person, alive or dead, having been diagnosed to have a particular disease or condition by a health care provider with diagnosis based on clinical criteria, or laboratory criteria, or both.~~

~~((6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.~~

~~(7)) (5) "Communicable disease" means an illness caused by an infectious agent ((which)) that can be transmitted from ((one)) a person, animal, or object to ((another)) a person by direct or indirect means including, but not limited to, transmission via an intermediate host or vector, food, water, or air.~~

~~((8) "Confidential HIV testing" means that the name or identity of the individual tested for HIV will be recorded and linked to the HIV test result, and that the name of the individual testing positive for HIV will be reported to the state or local health officer in a private manner.~~

~~(9)) (6) "Contaminated" or "contamination" means containing or having contact with infectious agents or chemical or radiological materials that pose an immediate threat to present or future public health.~~

~~((10)) (7) "Contamination control measures" means the management of persons, animals, goods, and facilities that are contaminated, or suspected to be contaminated, in a manner to avoid human exposure to the contaminant, prevent the contaminant from spreading, ((and/or)) or effect decontamination.~~

~~((11)) (8) "Department" means the Washington state department of health.~~

~~((12)) (9) "Detention" or "detainment" means physical restriction of activities of ((an individual)) a person by confinement for the purpose of controlling or preventing a serious and imminent threat to public health and may include one or more of the following: Physical plant, facilities, equipment, ((and/or)) or personnel to physically restrict activities of the ((individual)) person to accomplish ((such)) these purposes.~~

~~((13))~~ (10) "Disease control measures" means the management of persons, animals, goods, and facilities that are infected with, suspected to be infected with, exposed to, or suspected to be exposed to an infectious agent in a manner to prevent transmission of the infectious agent to humans.

~~((14))~~ (11) "Health care facility" ~~((means))~~ includes:

(a) ~~((Any facility or institution))~~ Adult family homes licensed under chapter 70.128 RCW;

~~(b) Assisted living facilities licensed under chapter 18.20 RCW((, assisted living facilities,));~~

~~(c) Birthing centers licensed under chapter 18.46 RCW((, birthing centers,));~~

~~(d) Clinics or other settings where one or more health care providers practice;~~

~~(e) Enhanced service facilities licensed under chapter 70.97 RCW;~~

~~(f) Hospitals licensed under chapter 70.41 RCW;~~

~~(g) Nursing homes licensed under chapter 18.51 RCW((, nursing homes, chapter 70.41 RCW, hospitals, or));~~

~~(h) Private establishments licensed under chapter 71.12 RCW((, private establishments, clinics, or other settings where one or more health care providers practice)); and~~

~~((b))~~ (i) In reference to ((a)) sexually transmitted ((disease)) infections or blood-borne pathogens, other settings as defined in chapter 70.24 RCW.

~~((15))~~ (12) "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Is military personnel providing health care within the state regardless of licensure.

~~((16))~~ (13) "Health order" or "order" means a written directive issued by the state or local health officer that requires the recipient to take specific action to remove, reduce, control, or prevent a risk to public health.

(14) "HIV testing" means conducting a laboratory test or sequence of tests to detect or monitor the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements ~~((to))~~ of WAC 246-100-207. ~~((To assure that the protection, including but not limited to, pre- and post-test counseling, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:~~

~~(a) Monitoring previously diagnosed infection with HIV;~~

~~(b) Monitoring organ or bone marrow transplants;~~

~~(c) Monitoring chemotherapy;~~

~~(d) Medical research; or~~

~~(e) Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.~~

~~The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting such existence.~~

~~((17))~~ (15) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune system and leave the person immunodeficient.

(16) "Infectious agent" means an organism such as a virus, rickettsia, bacteria, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.

~~((18))~~ (17) "Isolation" means the separation ~~(, for the period of communicability or contamination, of infected or contaminated persons or animals from others in such places and under such conditions as)~~ of persons or animals with an infectious agent or contaminant in order to prevent or limit the ((direct or indirect)) transmission of the infectious agent or contaminant ((from those infected or contaminated)) to those who are susceptible to disease or who may spread the agent or contaminant to others.

~~((19))~~ (18) "Local health ~~((department))~~ jurisdiction" or "LHJ" means ~~((the city, town, county, or district agency providing public health services to persons within the area, as provided in chapter 70.05 RCW and chapter 70.08 RCW))~~ a county health department under chapter 70.05 RCW, city/county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

~~((20))~~ (19) "Local health officer" means the ~~((individual))~~ person having been appointed under chapter 70.05 RCW as the health officer for the local health ~~((department))~~ jurisdiction, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department, or ~~((his or her))~~ their delegate appointed by the local board of health.

~~((21))~~ "Nosocomial infection" means an infection acquired in a hospital or other health care facility.

~~(22))~~ (20) "Medical treatment" or "treatment" means the treatment for curable diseases and treatment that causes a person to be unable to transmit a disease to others, based on generally accepted standards of medical and public health science.

(21) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.

(22) "Practical means to prevent transmission" means the good faith employment of an activity, behavior, method, or device that is scientifically demonstrated to measurably reduce the risk of transmitting an STI including:

(a) Use of a condom, barrier protection, or other prophylactic device; or

(b) Good faith participation in a treatment or preventive regimen prescribed by a health care provider or public health professional.

~~(23)~~ ~~((("Post-test counseling" means counseling after the HIV test when results are provided and directed toward:~~

~~(a) Increasing the individual's understanding of human immunodeficiency virus (HIV) infection;~~

~~(b) Affecting the individual's behavior in ways to reduce the risk of acquiring and transmitting HIV infection;~~

~~(c) Encouraging the individual testing positive to notify persons with whom there has been contact capable of spreading HIV;~~

~~(d) Assessing emotional impact of HIV test results; and~~

~~(e) Appropriate referral for other community support services.~~

~~(24)~~ "Pretest counseling" means counseling provided prior to HIV testing and aimed at:

~~(a) Helping an individual to understand:~~

~~(i) Ways to reduce the risk of human immunodeficiency virus (HIV) transmission;~~

~~(ii) The nature, purpose, and potential ramifications of HIV testing;~~

~~(iii) The significance of the results of HIV testing; and~~

~~(iv) The dangers of HIV infection; and~~

~~(b) Assessing the individual's ability to cope with the results of HIV testing.~~

~~(25))~~ "Principal health care provider" means the attending physician or other health care provider licensed or certified under Title 18 RCW, recognized as primarily responsible for diagnosis and treatment of a patient or, in the absence of such, the health care provider initiating diagnostic testing or medical treatment or medical therapy for a patient.

~~((26))~~ (24) "Quarantine" means the limitation of freedom of movement of ~~((such well))~~ persons or domestic animals ~~((as))~~ that have been exposed to, or are suspected to have been exposed to, an infectious agent~~((r))~~:

(a) For a period of time not longer than the longest usual incubation period of the infectious agent~~((r in such manner as))~~;

(b) In a way to prevent effective contact with those not so exposed.

~~((27))~~ (25) "School" means a facility for programs of education as defined in RCW 28A.210.070 (preschool and kindergarten through grade ~~((twelve))~~ 12).

~~((28))~~ (26) "Sexually transmitted ~~((disease (STD)))~~ infection (STI)" or "sexually transmitted disease (STD)" means a bacterial, viral, fungal, or parasitic ~~((disease))~~ infection or condition which is usually transmitted through sexual contact and considered to be a threat to public health and welfare, and to be an infection for which a legitimate public interest will be served by providing for regulation and treatments, including:

~~((a) (Acute pelvic inflammatory disease;~~

~~(b))~~ Chancroid;

~~((c))~~ (b) Chlamydia trachomatis infection;

~~((d))~~ (c) Genital ~~((and neonatal))~~ herpes simplex;

~~((e))~~ (d) Genital human papilloma virus infection;

~~((f))~~ (e) Gonorrhea;

~~((g))~~ (f) Granuloma inguinale;

~~((h))~~ (g) Hepatitis B infection;

~~((i))~~ (h) Human immunodeficiency virus infection (HIV) ~~((and acquired immunodeficiency syndrome (AIDS)))~~;

~~((j))~~ (i) Lymphogranuloma venereum; and

~~((k) Nongonococcal urethritis (NGU); and~~

~~(l))~~ (j) Syphilis.

~~((29))~~ (27) "Spouse" means any individual who is the marriage partner of ~~((an HIV-infected individual))~~ a person diagnosed with HIV, or who has been the marriage partner of the ~~((HIV-infected individual))~~ person diagnosed with HIV within the ~~((ten))~~ 10-year period prior to the diagnosis of HIV-infection, and evidence exists of possible exposure to HIV.

~~((30))~~ (28) "State health officer" means the person ~~((designated))~~ appointed by the secretary ~~((of the department))~~ under RCW 43.70.020 to serve as statewide health officer, or, in the absence of such designation, the ~~((person having primary responsibility for public health matters in the state))~~ secretary.

~~((31))~~ (29) "Suspected case" or "suspected to be infected" means the local health officer, in ~~((his or her))~~ their professional judgment, reasonably believes that infection with a particular infectious agent is likely based on signs and symptoms, laboratory evi-

dence, or contact with an infected ((individual)) person, animal, or contaminated environment.

((32)) (30) "Veterinarian" means ((an individual)) a person licensed under provisions of chapter 18.92 RCW ((, veterinary medicine, surgery, and dentistry and practicing animal health care)).

[Statutory Authority: RCW 70.24.380. WSR 18-23-056, § 246-100-011, filed 11/15/18, effective 12/16/18. Statutory Authority: RCW 70.24.130 and 2012 c 10. WSR 14-08-046, § 246-100-011, filed 3/27/14, effective 4/27/14. Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-011, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 43.20.050 (2) (d), 70.05.050 and 70.05.060. WSR 03-06-003, § 246-100-011, filed 2/19/03, effective 2/19/03. Statutory Authority: RCW 43.20.050. WSR 00-23-120, § 246-100-011, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. WSR 97-15-099, § 246-100-011, filed 7/21/97, effective 7/21/97. Statutory Authority: Chapter 70.24 RCW. WSR 93-08-036 (Order 354B), § 246-100-011, filed 4/1/93, effective 5/2/93. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-011, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-011, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. WSR 89-07-095 (Order 325), § 248-100-011, filed 3/22/89; WSR 88-17-057 (Order 317), § 248-100-011, filed 8/17/88. Statutory Authority: RCW 43.20.050. WSR 88-07-063 (Order 308), § 248-100-011, filed 3/16/88; WSR 87-11-047 (Order 302), § 248-100-011, filed 5/19/87.]

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

**WAC 246-100-021 Responsibilities and duties—Health care providers.** Every health care provider, as defined in chapter 246-100 WAC, shall:

(1) Provide adequate, culturally and linguistically appropriate, and understandable instruction in control measures designed to prevent the spread of disease to:

(a) Each patient with a communicable disease under ((his or her)) their care; and

(b) Others as appropriate to prevent spread of disease.

(2) Cooperate with public health authorities during investigation of:

(a) Circumstances of a case or suspected case of a notifiable condition or other communicable disease; and

(b) An outbreak or suspected outbreak of illness.

(3) Comply with requirements in WAC 246-100-206, 246-100-211, and chapter 246-101 WAC.

((3)) (4) Use protocols established in the *Control of Communicable Diseases Manual*, 20th edition, published by the American Public Health Association, when treating wounds caused by animal bites. A copy of this publication is available for review at the department and at each local health ((department)) jurisdiction.

(5) If conducting anonymous HIV testing do so consistent with the provisions of this chapter and, in accordance with chapter 246-101

WAC, report the identity of persons tested to the state or local public health officer if they have tested positive and received HIV health care or treatment services.

[Statutory Authority: RCW 43.20.050. WSR 15-05-014, § 246-100-021, filed 2/6/15, effective 3/9/15; WSR 00-23-120, § 246-100-021, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 43.20.050, 70.24.130 and 70.104.055. WSR 92-02-019 (Order 225B), § 246-100-021, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-021, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.104 RCW. WSR 90-10-036 (Order 049), § 248-100-021, filed 4/26/90, effective 5/27/90. Statutory Authority: RCW 43.20.050. WSR 87-11-047 (Order 302), § 248-100-021, filed 5/19/87.]

AMENDATORY SECTION (Amending WSR 15-05-014, filed 2/6/15, effective 3/9/15)

**WAC 246-100-036 Responsibilities and duties—Local health officers.** (1) The local health officer shall establish, in consultation with local health care providers, health facilities, emergency management personnel, law enforcement agencies, and any other entity (~~he or she~~) they deem(~~s~~) necessary, plans, policies, and procedures for instituting emergency measures necessary to prevent the spread of communicable disease or contamination.

(2) Local health officers shall:

(a) Notify health care providers within the local health (~~district~~) jurisdiction regarding requirements in this chapter;

(b) Ensure anonymous HIV testing is reasonably available;

(c) Make HIV testing, (~~AIDS counseling, and pretest and post-test counseling,~~) as defined in this chapter, available for voluntary, mandatory, and anonymous testing (~~and counseling as required by RCW 70.24.400~~);

(d) Make information on anonymous HIV testing (~~, AIDS counseling, and pretest and post-test counseling, as described under WAC 246-100-208 and 246-100-209,~~) available;

(e) Use identifying information on (~~HIV-infected individuals~~) persons diagnosed with HIV provided according to chapter 246-101 WAC only:

(i) For purposes of contacting the (~~HIV-positive individual~~) person diagnosed with HIV to provide test results (~~and post-test counseling~~); or

(ii) To contact persons who may have experienced (~~substantial~~) exposure, including persons identified as sex (~~and~~) or injection equipment-sharing partners(~~)~~ and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed social and health care services (~~and counseling~~) and disease prevention(~~; and~~);

~~(f) Destroy documentation of referral information established in WAC 246-100-072 and this subsection containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying partners or within three months, whichever occurs first), if the identity or identifying in-~~

formation of the persons living with HIV is not disclosed outside of the local health jurisdiction.

(3) Local health officers shall, when necessary, conduct investigations and institute disease control and contamination control measures, including medical examination, testing, counseling, treatment, vaccination, decontamination of persons or animals, isolation, quarantine, vector control, condemnation of food supplies, and inspection and closure of facilities, consistent with those indicated in the *Control of Communicable Diseases Manual*, 20th edition, published by the American Public Health Association, or other measures ~~((he or she))~~ they deem ~~((s))~~ necessary based on ~~((his or her))~~ their professional judgment, current standards of practice, and the best available medical and scientific information.

(4) A local health ~~((department))~~ jurisdiction should seek agreements as necessary with tribal governments ~~((r))~~ and with federal authorities ~~((e))~~, and with state agencies ~~((e))~~, and institutions of higher education that empower the local health officer to conduct investigations and institute control measures in accordance with WAC 246-100-040 on tribal lands, federal enclaves and military bases, and the campuses of state institutions. State institutions include, but are not limited to, state-operated: Colleges and universities, schools, hospitals, prisons, group homes, juvenile ~~((detention centers, institutions for juvenile delinquents))~~ rehabilitation facilities, and residential habilitation centers.

[Statutory Authority: RCW 43.20.050. WSR 15-05-014, § 246-100-036, filed 2/6/15, effective 3/9/15; WSR 03-17-022, § 246-100-036, filed 8/13/03, effective 9/13/03. Statutory Authority: RCW 43.20.050 (2) (d), 70.05.050, and 70.05.060. WSR 03-05-048, § 246-100-036, filed 2/13/03, effective 2/13/03. Statutory Authority: RCW 43.20.050. WSR 00-23-120, § 246-100-036, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.24.125 and 70.24.130. WSR 99-17-077, § 246-100-036, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. WSR 97-15-099, § 246-100-036, filed 7/21/97, effective 7/21/97. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-036, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-036, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. WSR 89-02-008 (Order 324), § 248-100-036, filed 12/27/88. Statutory Authority: RCW 43.20.050. WSR 88-07-063 (Order 308), § 248-100-036, filed 3/16/88.]

AMENDATORY SECTION (Amending WSR 03-05-048, filed 2/13/03, effective 2/13/03)

**WAC 246-100-070 Enforcement of local health officer orders. (1)**

An order issued by a local health officer in accordance with this chapter shall constitute the duly authorized application of lawful rules adopted by the ~~((state))~~ board ~~((of health))~~ and must be enforced by all police officers, sheriffs, constables, and all other officers and employees of any political subdivisions within the jurisdiction of the health department in accordance with RCW 43.20.050.

(2) Any person who ~~((shall))~~ violates any of the provisions of this chapter or any lawful rule adopted by the board ~~((shall be))~~ is

deemed guilty of a misdemeanor punishable (~~(as provided)~~) under RCW (~~(43.20.050)~~) 70.05.120.

(3) Any person who (~~shall~~) fails or refuses to obey any lawful order issued by any local health officer (~~shall be~~) is deemed guilty of a misdemeanor punishable (~~(as provided)~~) under RCW 70.05.120.

(4) Any person who violates or fails to comply with a health order issued under RCW 70.24.024 to a person with a sexually transmitted disease who is engaging in behaviors endangering the public health is guilty of a gross misdemeanor as described in RCW 70.24.025.

[Statutory Authority: RCW 43.20.050 (2)(d), 70.05.050, and 70.05.060. WSR 03-05-048, § 246-100-070, filed 2/13/03, effective 2/13/03.]

AMENDATORY SECTION (Amending WSR 10-01-082, filed 12/15/09, effective 1/15/10)

**WAC 246-100-072 Rules for notification of partners at risk of human immunodeficiency virus (HIV) (~~(infection)~~).** (1) A local health officer or authorized representative shall:

(a) Within three working days of receipt of a report of a previously unreported case of HIV infection, attempt to contact or obtain information from the principal health care provider to:

(i) Seek input on the best means of conducting a case investigation including partner notification; and

(ii) If appropriate, request that the provider contact the (~~(HIV-infected)~~) person living with HIV as required in subsection (2) of this section.

(b) Contact the (~~(HIV-infected)~~) person diagnosed with HIV to:

(i) (~~Provide post-test counseling as described under WAC 246-100-209;~~

~~(ii))~~ Discuss the need to notify sex or injection equipment-sharing partners, including spouses, that they may have been exposed to (~~(and infected with)~~) HIV and that they should seek HIV testing; and

~~((iii))~~ (ii) Offer assistance with partner notification as appropriate.

(c) Unless the health officer or designated representative determines partner notification is not needed or the (~~(HIV-infected)~~) person living with HIV refuses assistance with partner notification, assist with notifying partners in accordance with the "Recommendations for Partner Services Programs for HIV Infection, Syphilis, Gonorrhea, and Chlamydial Infection" as published by the Centers for Disease Control and Prevention, October 2008.

(2) If the local health officer or designated representative informs the principal health care provider that (~~(he or she)~~) they intend(~~(s)~~) to conduct a partner notification case investigation, the principal health care provider shall attempt to inform the (~~(HIV-infected)~~) person living with HIV that the local health officer or authorized representative will contact the (~~(HIV-infected)~~) person living with HIV for the purpose of providing assistance with the notification of partners.

(3) A health care provider (~~shall~~) may not disclose the identity of (~~(an HIV-infected individual)~~) a person living with HIV or the identity of sex (~~(and)~~) or injection equipment-sharing partners, in-

cluding spouses, at risk of HIV infection, except as authorized in RCW ((70.24.105)) 70.02.220 or in this section.

(4) Local health officers and authorized representatives shall ~~((a))~~ use identifying information, according to this section, on ~~((HIV-infected individuals))~~ persons living with HIV only to:

~~((i))~~ (a) Contact the ~~((HIV-infected individual to provide post-test counseling and))~~ person living with HIV to refer, as appropriate, ~~((referral))~~ to medical care, or to contact sex ~~((and))~~ or injection equipment-sharing partners, including spouses; or

~~((ii))~~ (b) Carry out an investigation of ~~((conduct endangering))~~ behavior that endangers the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024 ~~((and~~

~~((b))~~ Destroy documentation of referral information established under this subsection, containing identities and identifying information on the HIV-infected individual and at-risk partners of that individual, immediately after notifying partners or within three months of the date information was received, whichever occurs first, unless such documentation is being used in an active investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health pursuant to RCW 70.24.022 or 70.24.024).

(5) A health care provider may consult with the local health officer or an authorized representative about ~~((an HIV-infected individual))~~ a person living with HIV and the need for notification of persons identified as sex or injection equipment-sharing partners at any time.

[Statutory Authority: RCW 70.24.130. WSR 10-01-082, § 246-100-072, filed 12/15/09, effective 1/15/10. Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-072, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 70.24.125 and 70.24.130. WSR 99-17-077, § 246-100-072, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. WSR 97-15-099, § 246-100-072, filed 7/21/97, effective 7/21/97. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-072, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-072, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. WSR 89-02-008 (Order 324), § 248-100-072, filed 12/27/88.]

AMENDATORY SECTION (Amending WSR 09-22-097, filed 11/4/09, effective 12/5/09)

**WAC 246-100-202 ~~((Special diseases--))~~ Sexually transmitted ~~((diseases))~~ infections—Duties and authorities.** (1) Health care providers shall:

(a) Report each case of notifiable sexually transmitted ~~((disease))~~ infection as required in chapter 246-101 WAC; ~~((and))~~

(b) At each medical encounter, when providing treatment for an infectious sexually transmitted ~~((disease))~~ infection, provide ~~((instruction))~~ education, appropriate to each patient regarding:

(i) Communicability of the disease; ~~((and))~~

(ii) ~~((Requirements to refrain from acts))~~ Activities that may transmit the disease to another; and

(iii) Prevention methods, including practical means to prevent transmission;

(c) Ensure completion of a prenatal serologic test for syphilis in each pregnant woman pursuant to RCW 70.24.090 including:

(i) Submitting a blood sample for syphilis to a laboratory approved to perform prenatal serologic tests for syphilis, as required in RCW 70.24.090, at the time of the first prenatal visit; and

(ii) Deciding whether or not to omit the serologic test for syphilis if the test was performed elsewhere during the current pregnancy; ~~((and))~~

(d) When diagnosing or caring for a patient with gonococcal or chlamydial ophthalmia neonatorum, ~~((reporting))~~ report the case to the local health officer or local health ~~((department))~~ jurisdiction in accordance with the provisions of chapter 246-101 WAC; and

(e) Instill a prophylactic ophthalmic agent into both eyes of the newborn as prophylaxis against ophthalmia neonatorum up to two hours after the delivery, whether the delivery occurred vaginally or by cesarean section. Acceptable ophthalmic prophylactic agents are application of erythromycin ~~((or tetracycline))~~ consistent with the "Sexually Transmitted Diseases Treatment Guidelines" as published by the Centers for Disease Control and Prevention, 2015. In the event the U.S. Food and Drug Administration declares a shortage of ~~((these))~~ this prophylactic ophthalmic agent ~~((s)),~~ health care providers may substitute alternative prophylactic ophthalmic agents recommended by the Centers for Disease Control and Prevention. If the newborn's parent(s) or legal guardian refuses this procedure, the health care provider will document the refusal in the newborn's medical record.

(2) Laboratories, health care providers, and other persons shall deny issuance of a certificate or statement implying ~~((an individual))~~ a person is free from sexually transmitted ~~((disease))~~ infection.

(3) State and local health officers or their authorized representatives ~~((shall have authority to))~~ may conduct or cause to be conducted an interview and investigation of persons infected or reasonably believed to be infected with a sexually transmitted ~~((disease.))~~ infection when:

(a) ~~((For the purpose of this section, "reasonable belief" and "reasonably believed" shall mean a health officer's belief based upon a credible report from an identifiable individual indicating another person is likely to have a sexually transmitted disease (STD) or to have been exposed to a STD;~~

~~((b-))~~ (i) They know or have reason to believe that a person in their jurisdiction has an STI and is engaging in specified behavior that endangers the public health; and

(ii) The basis for the health officer's investigation is the officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

(b) In conducting the investigation, the health officer shall evaluate the allegations, as well as the reliability and credibility of any person or persons who provided information related to the specified behavior that endangers the public health.

(c) Investigations shall be conducted using procedures and measures described in WAC 246-100-036~~((+4))~~.

(4) Local health officers, health care providers, and others shall comply with the provisions in chapter 70.24 RCW, in addition to requirements in chapters 246-100 and 246-101 WAC.

(5) Any person who violates a rule adopted by the board for the control and treatment of a sexually transmitted ~~((disease))~~ infection is subject to penalty under RCW 70.24.080.

[Statutory Authority: RCW 70.24.130. WSR 09-22-097, § 246-100-202, filed 11/4/09, effective 12/5/09. Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-202, filed 5/18/05, effective 6/18/05.]

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

**WAC 246-100-203 (~~((Special diseases—))~~) Sexually transmitted ~~((diseases))~~ infections—Health officer orders. (1) When a state or local health officer within ((his or her)) their jurisdiction, con- cludes an investigation and determines that a person has an STI, their behavior occurred during an infectious period and was sufficient to transmit infection, and continues to engage in specified behavior that endangers the public health despite reasonable efforts to obtain the person's voluntary cooperation, the state or local health officer may, in accordance with RCW 70.24.024, issue orders ((for)) requiring a person to do one or more of the following:**

(a) Submit to medical examination((, testing, and/or counseling, as well as orders to)) or testing;

(b) Receive counseling;

(c) Receive medical treatment; or

(d) Cease and desist specific ((activities, when he or she knows or has reason to believe that a person has a sexually transmitted dis- ease and is engaging in conduct)) behavior endangering the public health.

((a) For purposes of this section, "reason to believe" means a health officer's belief that is based on:

(i) Laboratory test results confirming or suggestive of a STD; or

(ii) A health care provider's direct observation of clinical signs confirming an individual has or is likely to have a STD; or

(iii) Information obtained directly from an individual infected with a STD about the identity of his or her sexual or needle-sharing contacts when:

(A) Contact with the infected individual occurred during a period when the disease may have been infectious; and

(B) The contact was sufficient to transmit the disease; and

(C) The infected individual is, in the health officer's judgment, credible and believable.

(b) "Conduct endangering" (2) For the purposes of RCW 70.24.024 and this section, "behavior that endangers the public health" ((for the purposes of RCW 70.24.024 and this section,)) means:

((i)) (a) For all sexually transmitted infections, anal, oral, or vaginal intercourse ((for all sexually transmitted diseases;

(ii)) without a latex or plastic condom resulting in introduc- tion of semen or vaginal fluids to mucous membranes or an interruption of the epidermis.

(b) For HIV and Hepatitis B, the following behaviors that result in the introduction of blood, semen or vaginal fluids to mucous mem- branes:

~~((A))~~ (i) Anal, oral, or vaginal intercourse without a latex or plastic condom; ~~((and/or~~  
~~(B))~~ (ii) Sharing of injection equipment; ~~((and/or~~  
~~(C))~~ (iii) Knowingly donating or selling blood, blood products, body tissues, or semen; ~~(and~~  
~~(iii) Activities described in (b) (i) and (ii) of this subsection resulting in introduction of blood, semen, and/or vaginal fluids to:~~  
~~(A) Mucous membranes;~~  
~~(B) Eyes;~~  
~~(C) Open cuts, wounds, lesions; or~~  
~~(D) Interruption of epidermis);~~ or  
(iv) Any combination of these.  
(c) This section does not apply when practical means to prevent transmission were taken.

~~((e))~~ (3) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders for medical examination, testing, ((and/or)) counseling, or cessation of behavior that endangers public health under ((chapter 70.24)) RCW 70.24.024, only after:

~~((i))~~ (a) All other efforts to protect public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person to be affected by the order; and

~~((ii))~~ (b) They have sufficient evidence to "reasonably believe" the ((individual)) person to be affected by the order:

~~((A))~~ (i) Has a sexually transmitted ((disease)) infection; and

~~((B))~~ (ii) Is knowingly engaging in a pattern of "((conduct endangering)) behavior that endangers the public health"; and

~~((iii))~~ (c) They have investigated and reasonably confirmed the ((existence of "conduct endangering the public health")) occurrence of this pattern of behaviors by:

~~((A))~~ (i) Interviewing sources to assess their credibility and accuracy; and

~~((B))~~ (ii) Interviewing the person to be affected by the order; and

~~((iv))~~ (d) They have incorporated all information required in RCW 70.24.024 in a written order.

~~((d))~~ (4) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders for treatment under RCW ((70.24.022)) 70.24.024 only after laboratory test results or direct observation of clinical signs or assessment of clinical data by a ((physician)) health care provider confirm the ((individual)) person has, or is likely to have, a sexually transmitted ((disease)) infection.

~~((e))~~ (5) State and local health officers and their authorized representatives ~~((shall have authority to))~~ may issue written orders to cease and desist ((from)) specified ((activities)) behaviors under RCW 70.24.024 only after:

~~((i))~~ (a) They have determined the person to be affected by the order is engaging in "((conduct endangering)) behavior that endangers the public health"; and

~~((ii))~~ (b) Laboratory test results, or direct observation of clinical signs or assessment of clinical data by a ((physician)) health care provider, confirm the ((individual)) person has, or is likely to have, a sexually transmitted ((disease)) infection; and

~~((iii))~~ (c) They have exhausted procedures described in subsection ((8)(a)) (1) of this section; and

~~((iv))~~ (d) They have enlisted, if appropriate, court enforcement of the orders described in (c) and (d) of this subsection.

~~((f))~~ (6) Written orders to cease and desist ~~((from))~~ specified ~~((activities shall be for an initial))~~ behaviors must be reasonably related to the purpose or the restriction or restrictions for a period of time not to exceed ((three)) 12 months ((, and may be renewed by the health officer for periods of time not to exceed three months)) provided all requirements of RCW 70.24.024 regarding notification, confidentiality, right to a judicial hearing, and right to counsel are met ~~((again at the time of renewal))~~.

~~((2))~~ A state or local health officer within his or her jurisdiction may, in accordance with RCW 70.24.034, bring action in superior court to detain a person in a designated or approved facility when he or she knows or has reason to believe that person has a sexually transmitted disease and continues to engage in behaviors that present an imminent danger to the public health.

(a) "Behaviors that present an imminent danger to public health" or "BPID" for the purposes of detention in accordance with RCW 70.24.034 and this section means the following activities, under conditions specified below, performed by an individual with a laboratory-confirmed HIV infection:

(i) Anal or vaginal intercourse without a latex condom; or  
(ii) Shared use of blood-contaminated injection equipment;  
(iii) Donating or selling HIV-infected blood, blood products, or semen; and

(iv) Activities described in (a) (i) and (ii) of this subsection constitute BPID only if:

(A) The infected individual received post-test counseling as described in WAC 246-100-209 prior to repeating activities; and

(B) The infected individual did not inform the persons with whom the activities occurred of his or her infectious status.

(b) State and local health officers and their authorized representatives shall have authority to seek court orders for detainment under RCW 70.24.034 only for persons infected with HIV and only after:

(i) Exhausting procedures described in subsection (1) of this section; and

(ii) Enlisting, if appropriate, court enforcement of orders to cease and desist; and

(iii) Having sufficient evidence to "reasonably believe" the person is engaging in BPID.

(c) A local health officer may notify the state health officer if he or she determines:

(i) The criteria for BPID are met by an individual; and

(ii) Such individual fails to comply with a cease and desist order affirmed or issued by a court.

(d) A local or state health officer may request the prosecuting attorney to file an action in superior court to detain an individual specified in this subsection. The requesting local or state health officer or authorized representative shall:

(i) Notify the department prior to recommending the detainment setting where the individualized counseling and education plan may be carried out consistent with subsection (9) (d), (e), and (f) of this section;

(ii) Make a recommendation to the court for placement of such individual consistent with (e), (f), and (g) of this subsection; and

(iii) Provide to the court an individualized plan for education and counseling consistent with (f) of this subsection.

- ~~(e) State board of health requirements for detainment of individuals demonstrating BPID include:~~
- ~~(i) Sufficient number of staff, caregivers, and/or family members to:~~
- ~~(A) Provide round the clock supervision, safety of detainee, and security; and~~
- ~~(B) Limit and restrict activities to prevent BPID; and~~
- ~~(C) Make available any medical, psychological, or nursing care when needed; and~~
- ~~(D) Provide access to AIDS education and counseling; and~~
- ~~(E) Immediately notify the local or state health officer of unauthorized absence or elopement; and~~
- ~~(ii) Sufficient equipment and facilities to provide:~~
- ~~(A) Meals and nourishment to meet nutritional needs; and~~
- ~~(B) A sanitary toilet and lavatory; and~~
- ~~(C) A bathing facility; and~~
- ~~(D) Bed and clean bedding appropriate to size of detainee; and~~
- ~~(E) A safe detention setting appropriate to chronological and developmental age of detainee; and~~
- ~~(F) A private sleeping room; and~~
- ~~(G) Prevention of sexual exploitation;~~
- ~~(iii) Sufficient access to services and programs directed toward cessation of BPID and providing:~~
- ~~(A) Linguistically, socially, culturally, and developmentally appropriate ongoing AIDS education and counseling; and~~
- ~~(B) Psychological and psychiatric evaluation and counseling; and~~
- ~~(C) Implementation of court-ordered plan for individualized counseling and education consistent with (g) of this subsection;~~
- ~~(iv) If required, provide access to isolation and/or restraint in accordance with restraint and seclusion rules in WAC 275-55-263~~
- ~~(2)(c);~~
- ~~(v) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.~~
- ~~(f) Washington state board of health standards for an individualized counseling and education plan for a detainee:~~
- ~~(i) Consideration of detainee's personal and environmental characteristics, culture, social group, developmental age, and language;~~
- ~~(ii) Identification of habitual and addictive behavior and relapse pattern;~~
- ~~(iii) Identification of unique risk factors and possible cross-addiction leading to behavior presenting imminent danger to public health;~~
- ~~(iv) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;~~
- ~~(v) Provision of information about acquisition and transmission of HIV infection;~~
- ~~(vi) Teaching and training of individual coping skills to prevent relapse to BPID;~~
- ~~(vii) Specific counseling for chemical dependency, if required;~~
- ~~(viii) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and~~
- ~~(ix) Designation of a person primarily responsible for counseling and/or education who:~~
- ~~(A) Completed pretest and post-test counselor training approved by the office on AIDS; and~~

- ~~(B) Received training, as approved by the office on AIDS, focused on facilitating behavior change related to preventing BPID; and~~
- ~~(C) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and~~
- ~~(D) Completed at least one year clinical experience after postgraduate education with a primary focus on individualized behavior change; and~~
- ~~(E) Is a certified counselor under chapter 18.19 RCW;~~
- ~~(x) Designation and provision of a qualified counselor under WAC 275-19-145 when the detainee is assessed to have a drug or alcohol problem.~~
- ~~(g) The state board of health designates the following settings appropriate for detainment provided a setting meets requirements in (e)(i), (ii), (iii), (iv), and (v) of this subsection:~~
- ~~(i) Homes, care facilities, or treatment institutions operated or contracted by the department;~~
- ~~(ii) Private homes, as recommended by the local or state health officer;~~
- ~~(iii) Assisted living facilities licensed under chapter 18.20 RCW;~~
- ~~(iv) Nursing homes licensed under chapter 18.51 RCW;~~
- ~~(v) Facilities licensed under chapter 71.12 RCW, including:~~
- ~~(A) Psychiatric hospitals, per chapter 246-322 WAC;~~
- ~~(B) Alcoholism treatment centers if certified for substance use under chapter 275-19 WAC;~~
- ~~(C) Adult residential rehabilitation centers, per chapter 246-325 WAC;~~
- ~~(D) Private adult treatment homes, per chapter 246-325 WAC;~~
- ~~(E) Residential treatment facilities for psychiatrically impaired children and youth, per chapter 246-323 WAC;~~
- ~~(vi) A hospital licensed under chapter 70.41 RCW.)~~

[Statutory Authority: RCW 70.24.130 and 2012 c 10. WSR 14-08-046, § 246-100-203, filed 3/27/14, effective 4/27/14. Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-203, filed 5/18/05, effective 6/18/05.]

#### NEW SECTION

**WAC 246-100-2031 Sexually transmitted infections—Orders and standards for detainment.** (1) When the requirements in RCW 70.24.024 have been exhausted, and the state or local public health officer, within their respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health, a state or local health officer within their jurisdiction may, in accordance with RCW 70.24.034, bring an action in superior court to detain a person, who continues to engage in behaviors that present an imminent danger to the public health, in a designated facility.

(2) For the purposes of detention in accordance with RCW 70.24.034 and this section, "behaviors that present an imminent danger to public health" or "BPID" means the following activities, under con-

ditions specified below, performed by a person with a laboratory-confirmed infectious HIV infection:

- (a) Anal or vaginal intercourse without a latex or plastic condom; or
- (b) Shared use of injection equipment that contains blood;
- (c) Donating or selling blood, blood products, or semen; and
- (d) Activities described in (a) and (b) of this subsection constitute BPID only if the person with a laboratory-confirmed HIV infection is infectious and did not inform the persons with whom the activities occurred of their infectious status.

(3) A local health officer may notify the state health officer if they determine:

- (a) The criteria for BPID are met by a person; and
- (b) The local health officer obtained a superior court order requiring the person to comply with a cease and desist order and the person failed to comply.

(4) A state or local health officer may request the prosecuting attorney to file an action in superior court to detain a person specified in this subsection. The requesting state or local health officer or authorized representative shall:

(a) Notify the department prior to recommending the detainment setting where an individualized counseling and education plan may be carried out consistent with subsections (5), (6), and (7) of this section;

(b) Make a recommendation to the court for placement of the person consistent with subsections (5), (6), and (7) of this section; and

(c) Provide to the court an individualized plan for education and counseling consistent with subsection (6) of this section.

(5) Requirements for detainment of persons demonstrating BPID include:

(a) Sufficient number of staff, caregivers, or family members, or any combination of these to:

(i) Provide round-the-clock supervision, safety of detainee, and security;

(ii) Limit and restrict activities to prevent BPID;

(iii) Make available any medical, psychological, or nursing care when needed;

(iv) Provide access to education and counseling; and

(v) Immediately notify the state or local health officer of unauthorized absence or elopement.

(b) Sufficient equipment and facilities to provide:

(i) Meals and nourishment to meet nutritional and religious or cultural needs;

(ii) A sanitary toilet and lavatory;

(iii) A bathing facility;

(iv) Bed and clean bedding appropriate to size of detainee;

(v) A safe detention setting appropriate to chronological and developmental age of detainee; and

(vi) A private sleeping room.

(c) Sufficient access to services and programs directed toward cessation of BPID and providing:

(i) Psychological and psychiatric evaluation and counseling; and

(ii) Implementation of court-ordered plan for individualized counseling and education consistent with subsection (6) of this section.

(d) If required, provide access to facilities equipped to provide isolation or restraint, or both, in accordance with their applicable rules;

(e) Maintain a safe, secure environment free from harassment, physical danger, and sexual exploitation.

(6) Standards for an individualized counseling and education plan for a detainee include:

(a) Alignment with the detainee's personal and environmental characteristics, culture, social group, developmental age, and language;

(b) Identification of habitual and addictive behavior and relapse pattern;

(c) Identification of unique risk factors and possible cross-addiction leading to BPID;

(d) Identification of obstacles to behavior change and determination of specific objectives for desired behavior;

(e) Provision of information about acquisition and transmission of HIV;

(f) Teaching and training of individual coping skills to prevent relapse to BPID;

(g) Specific counseling for substance use disorder, if required;

(h) Identification of and assistance with access to community resources, including social services and self-help groups appropriate to provide ongoing support and maintenance of behavior change; and

(i) Designation of a person primarily responsible for counseling or education, or both, who:

(i) Has a postgraduate degree in social work, psychology, counseling, psychosocial nursing, or other allied profession; and

(ii) Completed at least one year of clinical experience after postgraduate education with a primary focus on individualized behavior change; and

(iii) Is a certified counselor under chapter 18.19 RCW;

(j) Designation and provision of a qualified counselor under chapter 246-811 WAC when the detainee is assessed to have substance use disorder.

(7) The following settings are appropriate for detainment provided a setting meets requirements in subsection (5)(a) through (e) of this section:

(a) Homes, care facilities, or treatment institutions operated or contracted by the department;

(b) Private homes, as recommended by the state or local health officer;

(c) Assisted living facilities licensed under chapter 18.20 RCW;

(d) Nursing homes licensed under chapter 18.51 RCW;

(e) Facilities licensed under chapter 71.12 RCW that provide behavioral health services, including:

(i) Psychiatric hospitals, under chapter 246-322 WAC;

(ii) Chemical dependency hospitals licensed under chapter 246-324 WAC;

(iii) Residential treatment facilities under chapter 246-337 WAC;

(f) A hospital licensed under chapter 70.41 RCW.

[]

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

**WAC 246-100-204** (~~((Special diseases—Human immunodeficiency virus (HIV)—))~~) **Absence of HIV or hepatitis C as an occupational qualification.** For the purpose of RCW 49.60.172 concerning the absence of HIV or hepatitis C infection as a bona fide occupational qualification only, "significant risk" means a job qualification which requires person-to-person contact likely to result in direct introduction of blood into ~~((the eye, an open cut or wound, or other interruption of the epidermis,))~~ a mucous membrane when:

- (1) No adequate barrier protection is practical; and
- (2) Determined only on case-by-case basis consistent with RCW 49.60.180.

[Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-204, filed 5/18/05, effective 6/18/05.]

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

**WAC 246-100-205** (~~((Special diseases—HIV—Testing and counseling following occupational exposure.))~~) **Blood-borne pathogen exposure—Occupation settings other than jail and corrections settings.** A person who has experienced ~~((a substantial))~~ an exposure to another person's bodily fluids in a manner that presents a possible risk of transmission of ~~((HIV))~~ blood-borne pathogens, and who is exposed while engaged in a category of employment determined to be at risk of substantial exposure to ~~((HIV))~~ blood-borne pathogens, may ask a state or local health officer to order ~~((pretest counseling, HIV testing, and post-test counseling))~~ testing for blood-borne pathogens of the person who was the source of the bodily fluids in accordance with RCW 70.24.340.

- (1) Substantial exposure that presents a possible risk of transmission ~~((shall be)),~~ and is therefore substantial, is limited to:
  - (a) A physical assault upon the exposed person involving blood ~~((or)),~~ semen, or vaginal fluid;
  - (b) Intentional, unauthorized, nonconsensual use of needles or sharp implements to inject or mutilate the exposed person; or
  - (c) An accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen, or vaginal fluids.

(2) The alleged exposure must have occurred on the job while the ~~((individual))~~ person was employed or acting as an authorized volunteer in one of the following employment categories that are at risk of substantial exposure to ~~((HIV))~~ blood-borne pathogens:

- (a) Law enforcement officer;
- (b) Firefighter;
- (c) Health care provider;
- (d) Staff of health care facilities;
- (e) Funeral director; ~~((or))~~
- (f) Embalmer; or
- (g) Persons licensed to perform body art, body piercing, and tattooing under chapter 18.300 RCW.

(3) The state or local health officer shall:

(a) Determine ~~((that))~~ whether the alleged exposure meets the criteria established in this section for substantial exposure that presents a possible risk of transmission ~~(; and~~

~~(b) Ensure that pretest counseling of the individual to be tested, or a legal representative, occurs; and~~

~~(c))~~, and, if criteria are met, notify and arrange for testing of the ((individual)) person who is the source of the exposure ((to occur within seven days of the request from the person exposed)) in accordance with RCW 70.24.340; and

~~((d))~~ (b) Ensure that records ((on HIV)) related to blood-borne pathogen testing ordered by ((a)) the health officer are maintained only by the ordering health officer or authorized representative.

(4) The health officer, as a precondition for ordering counseling and testing of the person who was the source of the ~~((bodily fluids))~~ exposure, may require that the exposed individual agree to be tested for ~~((HIV if such))~~ blood-borne pathogens if the health officer determines testing is ~~((determined))~~ appropriate ~~((by the health officer)).~~

(5) This section does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction.

[Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-205, filed 5/18/05, effective 6/18/05.]

AMENDATORY SECTION (Amending WSR 05-11-110, filed 5/18/05, effective 6/18/05)

**WAC 246-100-206** ~~((Special diseases—HIV—Testing and counseling of jail detainees.))~~ Blood-borne pathogen exposure—Local jail facilities. Jail administrators, with the approval of the local public health officer, may order ~~((pretest counseling, HIV testing and post-test counseling))~~ blood-borne pathogen testing of a jail detainee in accordance with RCW 70.24.360, ~~((provided that))~~ if the local ~~((public))~~ health officer determines that the detainee's ~~((actual or threatened behavior presents a possible risk to the staff, general public, or other persons.~~

~~(1) Actual behaviors present a possible risk if they result in "exposure presenting a possible risk" and involve one of the following actions:~~

~~(a) Anal, oral, or vaginal intercourse excluding conjugal visits; or~~

~~(b) Physical assault; or~~

~~(c) Sharing of injection equipment or sharp implements; or~~

~~(d) Throwing or smearing of blood, semen, or vaginal fluids; or~~

~~(2) Threatened behaviors present a "possible risk" if:~~

~~(a) The threatening individual states he or she is infected with HIV; and~~

~~(b) The threatened behavior is listed in subsection (1) (a), (b), (c), or (d) of this section; and~~

~~(c) The threatened behavior could result in "exposure presenting a possible risk."~~

~~(3))~~ behavior exposed the staff, other detainees, the general public, or other persons and the exposure presents a possible risk of transmitting a blood-borne pathogen.

(1) For purpose ~~((s of subsections (1) and (2))~~ of this section, "exposure presenting possible risk" means one or more of the activities identified in Column A of Table 1 resulting in one or more of the ~~((following:~~

- ~~(a) Introduction of blood, semen, or vaginal fluids into:~~
  - ~~(i) A body orifice or a mucous membrane;~~
  - ~~(ii) The eye; or~~
  - ~~(iii) An open cut, wound, lesion, or other interruption of the epidermis.~~
- ~~(b) A needle puncture or penetrating wound resulting in exposure to blood, semen, and/or vaginal fluids.~~
- ~~(4))~~ outcomes identified in Column B of Table 1.

**TABLE 1. "Exposure Presenting Possible Risk" - One or more of the activities in Column A resulting in one or more of the outcomes in Column B**

| <b><u>COLUMN A. Activities</u></b>  | <b><u>COLUMN B. Outcomes</u></b>   |
|---|--|
| <ul style="list-style-type: none"> <li><u>• Anal, oral, or vaginal intercourse without a latex or plastic condom, excluding conjugal visits; or</u></li> <li><u>• Physical assault; or</u></li> <li><u>• Sharing of injection equipment or sharp implements; or</u></li> <li><u>• Throwing or smearing of blood, semen, or vaginal fluid</u></li> </ul> | <ul style="list-style-type: none"> <li><u>• Introduction of blood, semen, or vaginal fluids, or some combination of these, into a mucous membrane; or</u></li> <li><u>• A needle puncture or penetrating wound resulting in exposure to blood, semen, or vaginal fluids, or some combination of these</u></li> </ul> |

(2) Jail administrators may order ~~((pretest counseling, post-test counseling, and HIV))~~ blood-borne pathogen testing only under the following conditions:

- (a) The jail administrator documents and reports to the local health officer, within seven days after the incident, any incident ~~((perceived to be actual or threatened "behaviors"))~~ resulting in "exposure presenting possible risk"; and
- (b) The local health officer:
  - (i) Determines the documented behavior or behaviors meet the criteria established in this section for behaviors presenting a "possible risk"; and
  - (ii) Interviews the detained ~~((individual))~~ person to evaluate the factual basis for alleged ~~((actual or threatened))~~ behavior; and
  - (iii) Makes a fact determination, based upon the documented behavior, the interview with the detained ~~((individual, and/or))~~ person, or independent investigation, or any combination of these, that sufficient factual evidence exists to support the allegation ~~((of actual or threatened "behaviors presenting possible risk"))~~ that the detainee's behavior resulted in exposure presenting possible risk of transmitting a blood-borne pathogen; and
  - (iv) Arranges for testing of the ~~((individual))~~ person who is the source of the ~~((behavior))~~ exposure to occur within seven days of the request from the jail administrator; and
  - (v) Reviews with the detained ~~((individual))~~ person who is the source of the ~~((behavior))~~ exposure the documentation of the ~~((actual or threatened))~~ behavior to try to assure understanding of the basis for ~~((HIV))~~ blood-borne pathogen testing; and
  - (vi) Provides written approval of the jail administrator's order prior to ~~((HIV))~~ blood-borne pathogen testing.
- (c) The jail administrator maintains ~~((HIV))~~ blood-borne pathogen test results and identity of the tested ((individual)) person as a confidential, nondisclosable record, ((as provided in RCW 70.24.105)) consistent with chapter 70.02 RCW.

[Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-206, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 70.24.380. WSR 02-12-106, § 246-100-206, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.24.125 and 70.24.130. WSR 99-17-077, § 246-100-206, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.022, [70.24].340 and Public Law 104-146. WSR 97-15-099, § 246-100-206, filed 7/21/97, effective 7/21/97. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-206, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-206, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW. WSR 89-07-095 (Order 325), § 248-100-206, filed 3/22/89; WSR 88-21-093 (Order 322), § 248-100-206, filed 10/19/88; WSR 88-17-056 (Order 316), § 248-100-206, filed 8/17/88. Statutory Authority: RCW 43.20.050. WSR 87-11-047 (Order 302), § 248-100-206, filed 5/19/87.]

NEW SECTION

**WAC 246-100-2061 Blood-borne pathogen exposure—Department of corrections facilities.** (1) For purposes of RCW 70.24.370, an exposure that presents a "possible risk of transmission of a blood-borne pathogen" means one or more of the activities identified in Column A of Table 2 resulting in one or more of the outcomes identified in Column B of Table 2.

**TABLE 2. "Possible Risk of Transmission of a Blood-borne Pathogen" - One or more of the activities in Column A resulting in one or more of the outcomes in Column B**

| COLUMN A. Activities  | COLUMN B. Outcomes   |
|---|--|
| <ul style="list-style-type: none"> <li>• Anal, oral, or vaginal intercourse without a latex or plastic condom, excluding conjugal visits; or</li> <li>• Physical assault; or</li> <li>• Sharing of injection equipment or sharp implements; or</li> <li>• Throwing or smearing of blood, semen, or vaginal fluid</li> </ul> | <ul style="list-style-type: none"> <li>• Introduction of blood, semen, or vaginal fluids, or some combination of these, into a mucous membrane; or</li> <li>• A needle puncture or penetrating wound resulting in exposure to blood, semen, or vaginal fluids, or some combination of these</li> </ul> |

(2) The chief medical officer of the department of corrections may order blood-borne pathogen testing for a detainee in accordance with RCW 70.24.370, if the chief medical officer or their designee determines that the inmate's behavior exposed the staff, general public, or other inmates and that exposure presents a possible risk of transmitting a blood-borne pathogen as defined in subsection (1) of this section.

[ ]

AMENDATORY SECTION (Amending WSR 18-23-056, filed 11/15/18, effective 12/16/18)

**WAC 246-100-207 (~~Human immunodeficiency virus (HIV)~~) Blood-borne pathogen testing—Ordering—Laboratory screening—Interpretation—Reporting.** (1) Except for persons (~~conducting seroprevalent stud-~~

~~ies under chapter 70.24 RCW, or~~) ordering or prescribing ~~((an HIV))~~ a blood-borne pathogen test for another ~~((individual))~~ person under subsections ~~((4) and (5))~~ (3) and (4) of this section ~~((or under WAC 246-100-208(1))~~), any person ordering or prescribing ~~((an HIV))~~ a blood-borne pathogen test for another ~~((individual, shall,))~~ person if the ~~((HIV))~~ test is positive for or suggestive of ~~((HIV))~~ blood-borne pathogen infection, ~~((provide the name of the individual and locating information to the local health officer for follow-up and post-test counseling as required by WAC 246-100-209))~~ shall follow the provisions of chapter 246-101 WAC.

(2) The local and state health officer or authorized representative shall periodically make efforts to inform providers in their respective jurisdiction about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings."

(3) ~~((Health care providers may obtain a sample brochure about the September 2006 Centers for Disease Control and Prevention "Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Healthcare Settings" by contacting the department's HIV prevention program at P.O. Box 47840, Olympia, WA 98504.~~

~~(4))~~ Any person authorized to order or prescribe an HIV test for another ~~((individual))~~ person may offer anonymous HIV testing without restriction.

~~((5))~~ (4) Blood banks, tissue banks, and others collecting or processing blood, sperm, tissues, or organs for transfusion/transplanting shall:

(a) Explain that donations are tested to ~~((prevent contamination))~~ ensure safety of the blood supply, tissue, or organ bank donations;

(b) At the time of notification regarding a positive ~~((HIV))~~ blood-borne pathogen test, provide or ensure at least one individual counseling session; and

(c) Inform the ~~((individual))~~ person that the name of the ~~((individual))~~ person testing positive for ~~((HIV infection))~~ a blood-borne pathogen will be confidentially reported to the state or local health officer.

~~((6))~~ (5) Persons subject to regulation under Title 48 RCW and requesting an insured, subscriber, or potential insured or subscriber to furnish the results of ~~((an HIV))~~ a blood-borne pathogen test for underwriting purposes, as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Before obtaining a specimen to perform ~~((an HIV))~~ a blood-borne pathogen test, provide written information to the ~~((individual))~~ person tested explaining(~~:-~~

~~(i) What an HIV test is;~~

~~(ii) Behaviors placing a person at risk for HIV infection;~~

~~(iii))~~ which blood-borne pathogen test is being administered and that the purpose of ((HIV)) blood-borne pathogen testing in this setting is to determine eligibility for coverage;

~~((iv) The potential risks of HIV testing; and~~

~~(v) Where to obtain HIV pretest counseling.)~~

(b) Obtain informed specific written consent for ~~((an HIV))~~ a blood-borne pathogen test or tests. The written informed consent ~~((shall))~~ must include:

(i) An explanation of confidential treatment of test result reports limited to persons involved in handling or determining applications for coverage or claims for the applicant or claimant; and

(ii) That the name of the ~~((individual))~~ person testing positive for ~~((HIV infection))~~ a blood-borne pathogen will be confidentially reported to the state or local health officer ~~((; and~~

~~((iii) At the time of notification regarding a positive HIV test, provide or ensure at least one individual counseling session)).~~

(c) Establish procedures to inform an applicant of the following:

~~((i) ((Post-test counseling specified under WAC 246-100-209 is required if an HIV test is positive or indeterminate;~~

~~((ii) Post-test counseling is done at the time any positive or indeterminate HIV test result is given to the tested individual;~~

~~((iii))~~ The applicant ~~((is required to))~~ may designate a health care provider or health care agency to whom ~~((positive or indeterminate HIV))~~ test results indicative of infection with a blood-borne pathogen are to be provided for interpretation ~~((and post-test counseling))~~; and

~~((iv) When an individual applicant does not identify a designated health care provider or health care agency and the applicant's HIV test results are positive or indeterminate, the insurer, health care service contractor, or health maintenance organization shall provide the test results to the state or local health department for interpretation and post-test counseling.~~

~~((7))~~ (ii) Test results indicative of infection are sent directly to the applicant.

(6) Laboratories and other places where ((HIV)) blood-borne pathogen testing is performed must demonstrate compliance with all of the requirements in the medical test site rules, chapter 246-338 WAC.

~~((8) The department laboratory quality assurance section shall accept substitutions for enzyme immunoassay (EIA) screening only as approved by the United States Food and Drug Administration (FDA) and a published list or other written FDA communication.~~

~~((9))~~ (7) Persons informing a tested ((individual)) person of positive laboratory test results indicating ((HIV)) blood-borne pathogen infection shall do so only when:

(a) The test or sequence of tests has been approved by the FDA or the Federal Centers for Disease Control and Prevention as a confirmed positive test result; and

(b) ~~((Such))~~ The information consists of relevant facts communicated in such a way that it will be readily understood by the recipient and is linguistically, socially, culturally, and developmentally appropriate.

~~((10))~~ (8) Persons may inform a tested ((individual)) person of the unconfirmed reactive results of an FDA-approved rapid ((HIV)) blood-borne pathogen test provided the test result is interpreted as preliminarily positive ((for HIV antibodies)), and the tested ((individual)) person is informed that:

(a) Further testing is necessary to confirm the reactive screening test result;

(b) The meaning of reactive screening test result is explained in simple terms, avoiding technical jargon;

(c) The importance of confirmatory testing is emphasized and a return visit for confirmatory test results is scheduled; and

(d) The importance of taking precautions to prevent transmitting infection to others while awaiting results of confirmatory testing is stressed.

[Statutory Authority: RCW 70.24.380. WSR 18-23-056, § 246-100-207, filed 11/15/18, effective 12/16/18; WSR 13-03-110, § 246-100-207, filed 1/17/13, effective 2/17/13. Statutory Authority: RCW 70.24.130. WSR 10-01-082, § 246-100-207, filed 12/15/09, effective 1/15/10. Statutory Authority: RCW 70.24.130 and 70.24.380. WSR 05-11-110, § 246-100-207, filed 5/18/05, effective 6/18/05. Statutory Authority: RCW 70.24.380. WSR 02-12-106, § 246-100-207, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.24.125 and 70.24.130. WSR 99-17-077, § 246-100-207, filed 8/13/99, effective 9/1/99. Statutory Authority: RCW 70.24.380. WSR 97-04-041, § 246-100-207, filed 1/31/97, effective 3/3/97. Statutory Authority: RCW 43.20.050 and 70.24.130. WSR 92-02-019 (Order 225B), § 246-100-207, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-207, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.24 RCW and RCW 70.24.130. WSR 89-20-006 (Order 334), § 248-100-207, filed 9/22/89, effective 10/23/89. Statutory Authority: Chapter 70.24 RCW. WSR 89-14-003 (Order 329), § 248-100-207, filed 6/22/89; WSR 88-17-058 (Order 318), § 248-100-207, filed 8/17/88.]

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

**WAC 246-100-211 ((~~Special diseases~~)) Tuberculosis.** (1) Health care providers diagnosing or caring for a person with tuberculosis, whether pulmonary or nonpulmonary, shall:

(a) Report the case to the local health officer or local health ((~~department~~)) jurisdiction in accordance with the provisions of this chapter, and

(b) Report patient status to the local health officer every three months or as requested.

(2) The local health officer or local health ((~~department~~)) jurisdiction shall:

(a) Have primary responsibility for control of tuberculosis within the designated jurisdiction;

(b) Maintain a tuberculosis control program including:

(i) Prophylaxis,

(ii) Treatment,

(iii) Surveillance,

(iv) Case finding,

(v) Contact tracing, and

(vi) Other aspects of epidemiologic investigation;

(c) Maintain a tuberculosis register of all persons with tuberculosis, whether new or recurrent, within the local jurisdiction including information about:

(i) Identification of patient,

(ii) Clinical condition,

(iii) Epidemiology of disease,

(iv) Frequency of examinations;

(d) Impose isolation of a person with tuberculosis in an infectious stage if that person does not observe precautions to prevent the spread of the infection;

(e) Designate the place of isolation when imposed;

- (f) Release the person from isolation when appropriate;
  - (g) Maintain and provide outpatient tuberculosis diagnostic and treatment services as necessary, including public health nursing services and physician consultation; and
  - (h) Submit reports of all cases to the department in accordance with the provisions of this chapter.
- (3) When a person with tuberculosis requires hospitalization,
- (a) Hospital admission shall occur in accordance with procedures arranged by the local health officer and the medical director or administrator of the hospital, and
  - (b) The principal health care provider shall:
    - (i) Maintain responsibility for deciding date of discharge, and
    - (ii) Notify the local health officer of intended discharge in order to assure appropriate outpatient arrangements.

[Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-100-211, filed 12/27/90, effective 1/31/91; WSR 87-11-047 (Order 302), § 248-100-211, filed 5/19/87.]

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |  |
|-----------------|--|
| WAC 246-100-208 | Counseling standard—HIV counseling.  |
| WAC 246-100-209 | Counseling standards—Human immunodeficiency virus (HIV) pretest counseling—HIV post-test counseling. |

## WSR 22-06-073

## PERMANENT RULES

## COLUMBIA BASIN COLLEGE

[Filed February 28, 2022, 3:29 p.m., effective March 31, 2022]

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

Purpose: Amending chapter 132S-110 WAC. Columbia Basin College filed an emergency rule to update sections of chapter 132S-110 WAC, Title IX hearing procedure for students. Columbia Basin College is required by the United States Department of Education to comply with Title IX regulations.

Citation of Rules Affected by this Order: Amending WAC 132S-110-010 and 132S-110-070.

Statutory Authority for Adoption: Chapter 34.05 RCW; RCW 28B.50.140(13).

Other Authority: 34 C.F.R. § 106.45 (b) (6) (i).

Adopted under notice filed as WSR 21-20-025 on September 24, 2021.

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 the 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: February 28, 2022.

Camilla Glatt  
Vice President for Human Resources  
and Legal Affairs

**OTS-3296.1**

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

**WAC 132S-110-010 Order of precedence.** This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to the college's Title IX grievance policy and regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Columbia Basin College's standard disciplinary procedures, WAC 132S-100-010 through 132S-100-500 these procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the hearing panel and hearing panel chair.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-010, filed 11/10/20, effective 12/11/20.]

AMENDATORY SECTION (Amending WSR 20-23-031, filed 11/10/20, effective 12/11/20)

**WAC 132S-110-070 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The hearing panel chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the hearing panel must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The hearing panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The hearing panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: RCW 28B.50.140 and 20 U.S.C. § 1092(f) and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 20-23-031, § 132S-110-070, filed 11/10/20, effective 12/11/20.]

**WSR 22-06-076**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 1, 2022, 8:22 a.m., effective April 1, 2022]

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

Purpose: The purpose of this rule making is to adopt amendments to the electrical rules governing the electrical board, appeals to the board, and the appeals process under WAC 296-46B-995. The department of labor and industries accepted a petition for rule making from the state's electrical board for amendments to the rules. The petition seeks to clarify, simplify, and make the procedures for appeals to the board easier to understand and navigate. The intent is to reduce confusion for appellants. This rule making adopts amendments requested by the petitioner. The adopted changes include modifying:

- Procedural requirements for the electrical board and electrical board meetings;
- Appeal and hearing requirements for matters to the board; and
- Rules for general housekeeping, such as punctuation, typographical and reference corrections, formatting, reorganizing and relocating requirements, removal of obsolete language, etc.

Citation of Rules Affected by this Order: Amending WAC 296-46B-995.

Statutory Authority for Adoption: Chapter 19.28 RCW; RCW 19.28.031, 19.28.251.

Adopted under notice filed as WSR 21-23-080 on November 16, 2021.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: March 1, 2022.

Joel Sacks  
Director

**OTS-3056.2**

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-995 Electrical board—Appeal rights and hearings.**

**General.**

(1) (~~Chapter 19.28 RCW provides the authority for the duties and responsibilities of the electrical board.~~) Electrical board.

(a) Except as provided in chapters 19.28 and 42.30 RCW, Open Public Meetings Act, and this chapter, all proceedings will be conducted according to chapter 34.05 RCW, Administrative Procedure Act and chapter 10-08 WAC, Model rules of procedure. ((See chapter 34.05 RCW, Administrative Procedure Act for specific definitions not described in this chapter.

~~(2))~~ (b) See RCW 19.28.311 for the composition of the electrical board.

~~((3))~~ (c) The board adopts the current edition of the "Roberts' Rules of Order, Newly Revised."

~~((4))~~ (d) The board ((will)) holds regular meetings on the last Thursday of January, April, July, and October of each year per RCW 19.28.311. Board meetings may be scheduled in a variety of geographic locations in Washington.

~~((5))~~ (e) All hearings before the board will be held on regularly scheduled meeting dates unless the board determines that an alternate date is necessary.

(f) The ((director or the)) chairperson or a majority of the members of the board may call ((a)) special meetings ((at any time)) as provided in RCW 42.30.080.

~~((6))~~ (g) Each board member ((must)) will be notified ((in writing)) of the agenda, date, time, and place of each regular and special meeting((. "Writing" includes by electronic mail, also known as "email," if the member has provided an email address for such notice)).

~~((7))~~ (h) The board ((or department)) may elect to have ((an appeal heard by the office of administrative hearings either tape)) board meetings recorded or transcribed by a court reporter((; and the board may so elect regarding hearings or board reviews heard by the board as a whole)).

~~((8))~~ (i) A majority of the board constitutes a quorum for purposes of rendering any decision.

~~((a) If a majority does not attend a hearing or board review on an appeal, the board may either continue the hearing or board review to a date certain or may hear the testimony and arguments.~~

~~(b) If the board hears the testimony and arguments, the members of the board who are absent may make their decisions after hearing the tape recording or reading the transcript, of the hearing or board review.~~

~~(c) If the board selects the method in (b) of this subsection, at the time of the hearing, the board will set a date certain for the absent members to complete review of the record and for the board as a whole to vote on the decision. The vote in (b) and (c) of this subsection may occur by U.S. mail, facsimile or by electronic mail and will be determined by the board at the hearing; the members' votes will be public record.~~

~~(9))~~ (j) Board members may attend meetings in person, via electronic means, or by telephone.

(k) All filings and documents for any matter before the board must be submitted to the chief electrical inspector, as secretary to the board((, 7273 Linderson Way)) as follows:

By mail: Department of Labor and Industries, P.O. Box 44460, Olympia, WA 98504-4460. ((Twenty copies of filings and documents must))

By personal delivery: Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501.

Documents may be submitted by ordinary mail, certified or registered mail, ((or by)) personal delivery((. Filings and documents must be received no later than forty-five days prior to the scheduled meeting. When filings or documents are received after the deadlines, the filings and documents will be presented to the board at the second regularly scheduled board meeting.

~~(10) All hearings before the board as a whole will be held on regularly scheduled meeting dates, as listed in subsection (4) of this section, unless the board determines that an alternate date is necessary.~~

~~(11) All notices of appeal, with a certified check payable to the department in the amount specified in subsection (12), (15), (16), or (18) of this section if required, must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before the regularly scheduled board meeting at which the hearing would occur. A separate appeal fee is required for each entity's appeal of a specific violation type (e.g., for a single entity, the designated administrator, multiple alleged violations of RCW 19.28.061 (5) (a) — Designated administrator not available, RCW 19.28.061 (5) (d) — Designated administrator fails to ensure proper permit is purchased, and RCW 19.28.061 (5) (e) — Designated administrator fails to ensure corrections are made would require three of the applicable appeal amounts; one for each specific violation type). The total appeal fee for each entity seeking an appeal hearing is one thousand dollars maximum for all violation types. For original appeals to the board, the appellant must submit twenty copies of any written argument, briefs, testimony, or documents for the board's consideration at least forty-five days prior to the scheduled hearing. When appeals, written argument, briefs, testimony, or documents are received after the deadlines, the appeals, written argument, briefs, testimony, or documents will be presented to the board at the second regularly scheduled board meeting), or in an electronic manner acceptable to the department.~~

(1) Except for original appeal documents and notices of appeal from decisions of either the office of administrative hearings or a city or town, any documents a party wants the board to consider at the hearing must be filed with the chief electrical inspector, as secretary to the board, by the dates specified in the notice of hearing letter. Documents submitted after the deadlines may be excluded at the discretion of the board chair as presiding officer in accordance with WAC 10-08-140 (2) (b).

## **Appeals**

~~((12) Appeals of penalties issued by the department.))~~ (2) General appeal requirements.

~~(a) A party may appeal ((a penalty issued by the department, pursuant to chapter 19.28 RCW and this chapter, to the board. The appeal will be assigned to the office of administrative hearings))~~ the following matters pursuant to chapter 19.28 RCW to the board: Penalties issued by the department, proposed decisions by the office of administrative hearings, suspension, revocation, or nonrenewals, disputes relating to department interpretation per RCW 19.28.111, 19.28.480, or 19.28.531, appeals of a continuing or basic trainee class or instructor for denials or revocations per WAC 296-46B-970, appeals pertaining to engineer approval or electrical testing laboratory recognition and

accreditation, and penalty decisions issued through an appellate process of a city or town.

(b) The appeal must be filed within twenty days after ((the notice)) service of the decision ((or penalty is given to the assessed party either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the assessed party)) and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department. The appeal fee for penalties must be in the sum of two hundred dollars or ten percent of the penalty amount, whichever is less, but in no event less than one hundred dollars. A separate appeal fee is required for each violation type with a maximum of one thousand dollars for all violation types. The appeal fee for all other appeals is two hundred dollars unless specified otherwise.

(c) The issues on appeal must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only. Appeals must identify the contentions of the appellant, and if applicable, must specify to which conclusions of law and findings of fact the party takes exception.

(d) The parties to the appeal will be notified of the date, time, and location of the appeal hearing by letter from the chief electrical inspector, as secretary to the board. The notice letter may also include deadlines for filing memorandums of authorities, prehearing conference or other matters necessary for the smooth adjudication of the appeal. Failure to comply with the deadlines outlined in the notice of hearing letter may result in exclusion of the documents. If a party is unable to attend the scheduled hearing due to the geographic location of the meeting, they must immediately notify the chief electrical inspector, as secretary to the board. The appeal may also be rescheduled for good cause shown.

(e) Requests to reschedule a hearing date must be in writing and made at least thirty days prior to the scheduled meeting at which the appeal is to be heard. The chairperson to the board, as the presiding officer, may grant or deny the request based on the needs of the parties.

(f) If either party intends to file a dispositive motion, they must notify the chief electrical inspector, as secretary to the board, no later than forty-five days prior to the scheduled hearing. The secretary will consult with the presiding officer to determine a briefing schedule so that the motion can be ruled upon at least fourteen days prior to the meeting at which the appeal is scheduled to be heard.

(g) Appeals received at least sixty days before the next regularly scheduled board meeting will be heard at that meeting. When an appeal is received less than sixty days prior to the next regularly scheduled board meeting, the appeal will be scheduled for the following regularly scheduled board meeting.

(h) The board may elect to have the assistance of an administrative law judge in any proceeding.

(3) Appeals of penalties issued by the department.

(a) Appeals will be assigned to the office of administrative hearings who will conduct the hearing pursuant to chapter 34.05 RCW and issue a proposed decision and order.

(b) In all appeals of penalties issued by the department, the department has the burden of proof by a preponderance of the evidence.

~~((13))~~ (4) Appeals of proposed decisions issued by the office of administrative hearings.

~~(a) (A party may appeal a proposed decision issued by the office of administrative hearings pursuant to chapter 19.28 RCW to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal of a proposed decision must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(14) Appeals of penalty decisions issued through an appellant process of a city or town.~~

~~(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(b) The notice of appeal must be received in the office of the chief electrical inspector, as secretary to the board, at least forty-five days before a regularly scheduled board meeting. If you want the board to consider written argument, briefs, testimony, or other documents, it must be submitted at least forty-five days prior to the scheduled hearing.~~

~~(15)) In all appeals of decision issued by the office of administrative hearings, the party aggrieved by the decision has the burden of proof by a preponderance of the evidence.~~

~~(b) All appeals of decisions issued by the office of administrative hearings will be based on the record of the hearing and conducted pursuant to chapter 34.05 RCW.~~

~~(c) If neither party timely appeals a proposed decision issued by the office of administrative hearings, the proposed decision and order shall become the final order of the board.~~

(5) Appeals of suspension, revocation, or nonrenewal. ~~((a))~~ An appeal of the suspension or revocation of a license or certificate of competency under RCW 19.28.241 and 19.28.341 or of nonrenewal of a license or certificate of competency under this chapter will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.

~~((b) The appeal must be filed within twenty days after the notice of suspension or revocation is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board. The request for an appeal must be accompanied with a certified check payable to the department in the sum of two hundred dollars or, for appeals of nonrenewal due to outstanding final judgments owed to the department, the amount shall be two hundred dollars or ten percent of the outstanding penalty amount, whichever is less, but in no event less than one hundred dollars.~~

~~(16))~~ (6) Appeals of decisions on installation.

(a) A party may seek board review for disputes relating to the interpretation and application of electrical/telecommunications in-

stallation or maintenance standards under RCW 19.28.111, 19.28.480, and 19.28.531. ~~((The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.~~

~~(b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars, must be received in the office of the chief electrical inspector, as secretary to the board, at least thirty days before a regularly scheduled board meeting. All parties must submit any written argument, briefs, testimony, or documents for the board's consideration at least twenty days prior to the scheduled hearing.~~

~~(17)) The request for review must be filed with the office of the chief electrical inspector, as secretary to the board, within twenty days after the department issues its written interpretation.~~

~~(b) Appeals according to this section must specify why the department's interpretation or application of the installation or maintenance standards is in error.~~

~~(7) Appeals of a continuing or basic trainee class, course sponsor, or instructor for denials, suspensions, or revocations.~~

~~(a) A party may ((appeal a decision issued by the department, pursuant to)) request a review of a decision of denial or modification of an application for a class or instructor issued by the department under WAC 296-46B-970 (3) (e) (iv) ((to the superior court per RCW 34.05.542(3))). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the denial or modification. The request must include the review fee specified in WAC 296-46B-970 (3) (e) (iv). The review fee is nonrefundable.~~

~~(b) A party may appeal a suspension or revocation of a course sponsor or instructor by the department under WAC 296-46B-970 (8) (a). The party must submit a written request for review to the chief electrical inspector, as secretary to the board, within twenty days of notification of the suspension or revocation.~~

~~((18)) (8) Appeals pertaining to engineer approval or electrical testing laboratory recognition and accreditation.~~

~~((a)) A party may appeal a decision issued by the department pursuant to WAC 296-46B-997 or 296-46B-999. The appeal will be heard by the board in accordance with chapter 34.05 RCW and not assigned to the office of administrative hearings. The board will conduct the hearing and may elect to have the assistance of an administrative law judge in the proceeding.~~

~~((b) The notice of appeal, with the certified check payable to the department in the sum of two hundred dollars for appeals pertaining to engineer approval or recognition and accreditation of an electrical testing laboratory, must be filed within twenty days after the notice of the department's decision is served on the subject of said action, either by personal service or using a method by which the mailing can be tracked or the delivery can be confirmed, sent to the last known address of the subject and must be filed by written notice of appeal with the chief electrical inspector, as secretary to the board.~~

~~(19)) (9) Appeals of penalty decisions issued through an appellate process of a city or town.~~

~~(a) A party may appeal a decision pursuant to RCW 19.28.010(4) to the board. The appeal must be filed within twenty days after service of the decision issued by a city or town and must be made by filing a written notice of appeal with the chief electrical inspector, as secretary to the board.~~

(b) All appeals of decisions issued by a city or town will be based on the record of the hearing at the city or town and conducted pursuant to chapter 34.05 RCW.

(c) The appeal procedures will be the same as those for appeals of proposed decisions issued by the office of administrative hearings.

(d) The city or town will reimburse the department for all costs of an appeal.

(10) Judicial review of final decisions of the board.

(a) A party may seek judicial review of a final order of the board within thirty days after service of the decision. Appeals of final decisions and orders must be ~~((done))~~ made in accordance with chapter 34.05 RCW.

~~((20) If appeal(s) according to this section are not filed or the appeal is not filed timely, the proposed decision or action becomes final with no further action on the part of the department or the board.~~

~~(21) Appeals - General requirements.~~

~~(a) Appeals according to this section must specify the contentions of the appellant, and must for subsection (13) or (14) of this section specify to which conclusions of law and findings of fact the party takes exception. The appeal will be based on the record of the hearing. The board will not grant a hearing de novo.~~

~~(b) In appeals under subsections (13), (14), (15), (16), and (17) of this section, the issues to be adjudicated must be made as precise as possible, in order that the board may proceed promptly to conduct the hearing on relevant and material matter only.~~

~~(c) In all appeals of chapter 19.28 RCW and this chapter heard before the office of administrative hearings or directly by the board, the department has the burden of proof by a preponderance of the evidence.~~

~~(d) In all appeals of a decision by the office of administrative hearings to the board, the party aggrieved by the decision of the office of administrative hearings has the burden of proof by a preponderance of the evidence.)~~ (b) A party may seek judicial review within thirty days of department decisions not specified above in accordance with RCW 34.05.570(4).

#### **Appearance and practice before board.**

~~((22))~~ (11) No party may appear as a representative in proceedings other than the following:

(a) Attorneys at law qualified to practice before the supreme court of the state of Washington;

(b) Attorneys at law qualified to practice before the highest court of record of another state, if the attorneys at law of the state of Washington are permitted to appear as representatives before administrative agencies of the other state, and if not otherwise prohibited by Washington law; or

(c) An owner, officer, partner, or full-time employee of a firm, association, organization, partnership, corporation, or other entity who appears for the firm, association, organization, partnership, corporation or other entity.

~~((23))~~ (12) All persons appearing in proceedings as a representative must conform to the standards of ethical conduct required of attorneys before the courts of Washington. If a person does not conform to these standards, the board may decline to permit the person to appear as a representative in any proceeding before the board.

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-995, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW, RCW 19.28.010 and 19.28.031. WSR 17-12-021, § 296-46B-995, filed 5/30/17, effective 7/1/17. Statutory Authority: Chapter 19.28 RCW. WSR 13-03-128, § 296-46B-995, filed 1/22/13, effective 3/1/13. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-995, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-995, filed 11/25/08, effective 12/31/08; WSR 08-08-084, § 296-46B-995, filed 4/1/08, effective 4/1/08; WSR 06-24-041, § 296-46B-995, filed 11/30/06, effective 12/31/06; WSR 06-05-028, § 296-46B-995, filed 2/7/06, effective 5/1/06. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2003 c 399, 2003 c 211, 2003 c 78, and 2003 c 242. WSR 04-12-049, § 296-46B-995, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2002 c 249, chapters 34.05 and 19.28 RCW. WSR 03-09-111, § 296-46B-995, filed 4/22/03, effective 5/23/03.]

WSR 22-06-084  
PERMANENT RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 1, 2022, 2:36 p.m., effective April 1, 2022]

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

Purpose: The department is adopting amendments to WAC

388-437-0005 Changes to food assistance in response to the COVID-19 pandemic, to define that households receiving a zero benefit are not eligible for emergency adjustments to food assistance benefit issuances, and households that are eligible to receive an emergency adjustment will receive a minimum of \$95, as implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

Citation of Rules Affected by this Order: Amending WAC

388-437-0005.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 6201, Section 2302.

Adopted under notice filed as WSR 22-01-140 on December 15, 2021.

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

Number of Sections Adopted at the Request of a 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 1, Repealed 0.

Date Adopted: March 1, 2022.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4883.3**

AMENDATORY SECTION (Amending WSR 21-07-098, filed 3/22/21, effective 4/22/21)

**WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic.** Starting March 2020, assistance units (AUs) eligible for either federal or state-funded food assistance, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4) (b).

(2) Beginning April 2021, AUs that receive less than \$95.00 in emergency allotments under WAC 388-437-0005(1) will receive a minimum emergency allotment of \$95.00.

(3) AUs receiving zero benefits due to income do not qualify for an emergency allotment unless the zero benefit is due to a prorated issuance in the first month of eligibility, as described in WAC 388-412-0015(4), with ongoing months above zero benefits.

(4) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires;

or

(c) The food and nutrition service directs otherwise.

~~((3))~~ (5) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

[Statutory Authority: RCW 74.04.500, 74.04.510, 74.08A.120 and H.R. 6201. WSR 21-07-098, § 388-437-0005, filed 3/22/21, effective 4/22/21.]

## WSR 22-06-088

## PERMANENT RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 1, 2022, 3:36 p.m., effective April 1, 2022]

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

Purpose: The department is amending WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640?, to rephrase the order of definitions to put them in alphabetical order. The change does not alter the intent or context of the rule and will not affect any existing rules.

Citation of Rules Affected by this Order: Amending WAC 388-71-0503.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074.

Adopted under notice filed as WSR 22-01-187 on December 20, 2021.

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

Number of Sections Adopted at the 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 1, Repealed 0.

Date Adopted: March 1, 2022.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4907.1**

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

**WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640? "Agency provider"** means a long-term care worker who works for a home care agency.

**"Area agencies on aging (AAA)"** means a contracted entity that aging and long-term support administration (ALTSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals eighteen and older who receive medicaid-funded LTC in their own homes.

**"Applicant"** means a person who is in the process of becoming an in-home long-term care worker.

(~~"Negative actions" are listed in WAC 388-113-0030.~~)

**"Background check"** means a name and date of birth check or a fingerprint-based background check, or both.

**"Background check result"** is defined in WAC 388-113-0010.

**"Background check central unit (BCCU)"** means the DSHS entity responsible for conducting background checks for the department.

**"Character, competence, and suitability determination (CC&S)"** is defined in WAC 388-113-0050.

**"Client"** means an individual receiving medicaid-funded in-home long term services from the department.

**"Department"** means the department of social and health services or its designees.

**"Family member"** includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

**"Fingerprint-based background check"** means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

**"Home care agency (HCA)"** means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

**"Home care agency long-term care worker"** means a long-term care worker who works for a home care agency.

**"Individual provider (IP)"** as defined in RCW 74.39A.240 limited to individual providers contracted with the department.

**"Long-term care worker"** as defined in RCW 74.39A.009 (17) but limited to individual providers contracted with the department or hired by the home care agency.

**"Name and date of birth check"** is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

**"Negative actions"** are listed in WAC 388-113-0030.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0503, filed 8/30/21, effective 10/1/21.]

WSR 22-06-094
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed March 2, 2022, 8:57 a.m., effective May 1, 2022]

Effective Date of Rule: May 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: 16 U.S.C. § 544f(1) requires the United States Secretary of Agriculture to concur with the standards applicable to the special management areas. On February 28, 2022, the United States Secretary of Agriculture granted concurrence to all provisions, except 350-082-0200 (2)(a). The secretary's concurrence recognizes that rule provision was previously removed from the management plan and by administrative error remains in the land use ordinance. The secretary's concurrence requests the gorge commission remove that provision when it next updates division 082. The secretary's concurrence states that the administrative error does not affect concurrence.

Purpose: This rule adopts a land use ordinance for the Columbia River Gorge National Scenic Area as required by RCW 43.97.015, O.R.S. 196.150, 16 U.S.C. §§ 544e(c) and 544f(1), incorporating the guidelines from the revised management plan for the Columbia River Gorge National Scenic Area, adopted by the Columbia River Gorge Commission on October 13, 2020, and concurred on by the United States Secretary of Agriculture on February 19, 2021.

Citation of Rules Affected by this Order: New 350-082-0010, 350-082-0020, 350-082-0030, 350-082-0040, 350-082-0050, 350-082-0060, 350-082-0070, 350-082-0080, 350-082-0090, 350-082-0100, 350-082-0110, 350-082-0120, 350-082-0130, 350-082-0140, 350-082-0150, 350-082-0160, 350-082-0170, 350-082-0180, 350-082-0190, 350-082-0200, 350-082-0210, 350-082-0220, 350-082-0230, 350-082-0240, 350-082-0250, 350-082-0260, 350-082-0270, 350-082-0280, 350-082-0290, 350-082-0300, 350-082-0310, 350-082-0320, 350-082-0330, 350-082-0340, 350-082-0350, 350-082-0360, 350-082-0370, 350-082-0380, 350-082-0390, 350-082-0400, 350-082-0410, 350-082-0420, 350-082-0430, 350-082-0440, 350-082-0450, 350-082-0460, 350-082-0470, 350-082-0480, 350-082-0490, 350-082-0500, 350-082-0510, 350-082-0520, 350-082-0530, 350-082-0540, 350-082-0550, 350-082-0560, 350-082-0570, 350-082-0580, 350-082-0590, 350-082-0600, 350-082-0610, 350-082-0620, 350-082-0630, 350-082-0640, 350-082-0650, 350-082-0660, 350-082-0670, 350-082-0680, 350-082-0690, 350-082-0700, 350-082-0710, and 350-082-0720.

Statutory Authority for Adoption: RCW 43.97.015; ORS 196.150; 16 U.S.C. §§ 544e(c) and 544f(1).

Adopted under notice filed as WSR 21-20-120 on October 5, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 72, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 72, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, 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: December 14, 2021.

Connie L. Acker  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [22-08](#) issue of the Register.

**WSR 22-06-097**  
**PERMANENT RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed March 2, 2022, 10:27 a.m., effective April 2, 2022]

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

Purpose: The Washington state liquor and cannabis board (WSLCB) adopted amendments to WAC 314-55-101, 314-55-102, and 314-55-1025 to require that all marijuana products produced and sold in Washington state are tested for pesticides. The adopted rule amendments also allow WSLCB to conduct random or investigation driven testing for heavy metals in marijuana products.

Citation of Rules Affected by this Order: Amending WAC 314-55-101, 314-55-102, and 314-55-1025.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Adopted under notice filed as WSR 22-01-055 on December 8, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 314-55-102 is amended to include a new subsection as follows:

(11) All marijuana products produced, processed, distributed or sold after the effective date of these rules must comply with these rules and this chapter, however, post-harvest products in the possession of, or being processed by a licensee that do not comply with these rules as of their effective date may be sold, distributed or both within a reasonable period of time determined by the board.

This nonsubstantive amendment was added to allow for a transition period for rule implementation.

A final cost-benefit analysis is available by contacting Jeff Kildahl, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1781, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

Number of Sections Adopted at the Request of a 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 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 3, Repealed 0.

Date Adopted: March 2, 2022.

David Postman  
Chair

**OTS-3473.4**

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

**WAC 314-55-101 Quality ((~~assurance sampling protocols~~) control sampling.** (1) ((~~To ensure quality assurance samples submitted to certified third-party laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section.~~

~~(2) Sampling protocols for all marijuana product lots and batches:~~

~~(a) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:~~

~~(i) Adulterating the sample with kief, concentrates, or other extracts;~~

~~(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; or~~

~~(iii) Pregrinding a flower lot sample.~~

~~(b) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

~~(c) Persons collecting samples must wash their hands prior to collecting a sample from a lot or batch, wear appropriate gloves while preparing or deducting the lot or batch for sample collection, and must use sanitary utensils and storage devices when collecting samples.~~

~~(d) Samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.~~

~~(e) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.~~

~~(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:~~

~~(i) The sixteen digit identification number generated by the traceability system;~~

~~(ii) The license number and name of the certified lab receiving the sample;~~

~~(iii) The license number and trade name of the licensee sending the sample;~~

~~(iv) The date the sample was collected; and~~

~~(v) The weight of the sample.) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent~~

with RCW 69.50.348. Noncompliance may result in disciplinary action as described in this chapter and applicable law.

(2) **Sample collection.** All samples of marijuana, useable marijuana, or marijuana-infused products must be submitted to a certified lab for testing consistent with this chapter.

(a) All samples must be deducted, stored, and transported in a way that prevents contamination and degradation.

(b) To maximize sample integrity, samples must be placed in a sanitary container and stored in a location that prevents contamination and degradation.

(c) Each quality control sample container must be clearly marked "quality control sample" and labeled with the following information:

(i) The certificate number and name of the certified lab receiving the sample;

(ii) The license number and registered trade name of the licensee sending the sample;

(iii) The date the sample was collected; and

(iv) The weight of the marijuana, useable marijuana, or marijuana-infused product the sample was collected from.

(d) Sampling and analysis requirements apply to all marijuana products regulated by the board.

(3) **Additional sampling protocols for ((flower lots)) quantities of marijuana flower:**

(a) ((Licensees or certified labs must collect a minimum of four separate samples from each marijuana flower lot up to five pounds. Licensees or certified labs may collect more samples than this minimum, but must not collect less. The)) Samples must be of roughly equal weight not less than one gram each. Each sample must be deducted from a harvest as defined in WAC 314-55-010(14).

(b) ((The four separate samples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. Dividing a lot into quadrants prior to collecting samples must be done in a manner that ensures the samples are collected from four evenly distributed areas of the flower lot and may be done visually or physically.

(c) The four samples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.)) For marijuana flower weighing up to 10 pounds, a minimum of eight samples must be taken.

(c) For marijuana flower weighing 10 pounds or more but less than 20 pounds, a minimum of 12 samples must be taken.

(d) For marijuana flower weighing 20 pounds or more but less than 30 pounds, a minimum of 15 samples must be taken.

(e) For marijuana flower weighing 30 pounds or more but less than 40 pounds, a minimum of 18 samples must be taken.

(f) For marijuana flower weighing 40 pounds or more but not more than 50 pounds, a minimum of 19 samples must be taken.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. ((Certified labs may also return any unused portion of the samples.))

(5) Certified labs ((may)) must reject or fail a sample if the lab has reason to believe the sample was not collected in the manner required by this section, adulterated in any way, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

~~((6) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license the licensed producer or processor, or certification of the certified lab.))~~

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-101, filed 5/31/17, effective 8/31/17; WSR 16-11-110, § 314-55-101, filed 5/18/16, effective 6/18/16.]

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

**WAC 314-55-102 Quality assurance ((testing)) and quality control.** ~~((A third-party testing lab must be certified by the WSLCB or the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to conducting quality assurance tests required under this section.~~

~~(1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below, with the exception of mycotoxin, heavy metal, or pesticide residue screening. Certification to perform mycotoxin, heavy metals and pesticides may be obtained but is not required to obtain certification as a testing lab. A lab must become certified in all fields of testing prior to conducting any testing or screening in that field of testing, regardless of whether the test is required under this section.~~

~~(a) **Potency analysis.**~~

~~(i) Certified labs must test and report the following cannabinoids to the WSLCB when testing for potency:~~

~~(A) THCA;~~

~~(B) THC;~~

~~(C) Total THC;~~

~~(D) CBDA;~~

~~(E) CBD; and~~

~~(F) Total CBD.~~

~~(ii) Calculating total THC and total CBD.~~

~~(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).~~

~~(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).~~

~~(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.~~

~~(b) **Potency analysis for flower lots.**~~

~~(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:~~

~~(A) THCA;~~

~~(B) THC;~~

~~(C) Total THC;~~

~~(D) CBDA;~~

- ~~(E) CBD; and~~
- ~~(F) Total CBD.~~

~~(ii) Calculating total THC and total CBD.~~

~~(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).~~

~~(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).~~

~~(c) Certified labs may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.~~

~~(i) **Moisture analysis.** The sample and related lot or batch fails quality assurance testing for moisture analysis if the results exceed the following limits:~~

~~(A) Water activity rate of more than 0.65 a<sub>w</sub>; and~~

~~(B) Moisture content more than fifteen percent.~~

~~(ii) **Foreign matter screening.** The sample and related lot or batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:~~

~~(A) Five percent of stems 3mm or more in diameter; and~~

~~(B) Two percent of seeds or other foreign matter.~~

~~(iii) **Microbiological screening.** The sample and related lot or batch fail quality assurance testing for microbiological screening if the results exceed the following limits:~~

|  | Enterobacteria (bile-tolerant gram-negative bacteria) | <i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i> |
|--|---|--|
| Unprocessed Plant Material               | 10 <sup>4</sup>                                       | Not detected in 1g   |
| Extracted or processed Botanical Product | 10 <sup>3</sup>                                       | Not detected in 1g   |

~~(iv) **Mycotoxin screening.** The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:~~

~~(A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and~~

~~(B) Ochratoxin A: 20 µg/kg of substance.~~

~~(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.~~

| Solvent*    | ppm   |
|-------------|-------|
| Acetone     | 5,000 |
| Benzene     | 2     |
| Butanes     | 5,000 |
| Cyclohexane | 3,880 |
| Chloroform  | 2     |

| Solvent*                    | ppm   |
|-----------------------------|-------|
| Dichloromethane             | 600   |
| Ethyl acetate               | 5,000 |
| Heptanes                    | 5,000 |
| Hexanes                     | 290   |
| Isopropanol<br>(2-propanol) | 5,000 |
| Methanol                    | 3,000 |
| Pentanes                    | 5,000 |
| Propane                     | 5,000 |
| Toluene                     | 890   |
| Xylene**                    | 2,170 |

\*And isomers thereof.

\*\*Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

~~(c) **Heavy metal screening.** A sample and related lot or batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.~~

| Metal             | µ/daily dose (5 grams) |
|-------------------|------------------------|
| Inorganic arsenic | 10.0                   |
| Cadmium           | 4.1                    |
| Lead              | 6.0                    |
| Mercury           | 2.0                    |

~~(2) **Quality assurance testing required.** The following quality assurance tests are the minimum required tests for each of the following marijuana products, respectively. Licensees and certified labs may elect to do multiple quality assurance tests on the same lot or testing for mycotoxin, pesticides, or heavy metals pursuant to chapter 246-70 WAC.~~

~~(a) **General quality assurance testing requirements for certified labs.**~~

~~(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.~~

~~(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion of the test(s).~~

~~(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.~~

~~(b) **Marijuana flower lots and other material lots.** Marijuana flower lots or other material lots require the following quality assurance tests:~~

| Product  | Test(s) Required   |
|--|--|
| Lots of marijuana flowers or other material that will not be extracted | 1. Moisture content<br>2. Potency analysis<br>3. Foreign matter inspection<br>4. Microbiological screening<br>5. Mycotoxin screening |

~~(c) **Intermediate products.** Intermediate products must meet the following requirements related to quality assurance testing:~~

- ~~(i) All intermediate products must be homogenized prior to quality assurance testing;~~
- ~~(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;~~
- ~~(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and~~
- ~~(iv) All batches of intermediate products require the following quality assurance tests:~~

| <b>Product</b>  | <b>Test(s) Required Intermediate Products</b>  |
|---|--|
| Marijuana mix   | 1. Moisture content*<br>2. Potency analysis<br>3. Foreign matter inspection*<br>4. Microbiological screening<br>5. Mycotoxin screening |
| Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity) | 1. Potency analysis<br>2. Mycotoxin screening*<br>3. Residual solvent test   |
| Concentrate or extract made with a CO <sub>2</sub> extractor like hash oil  | 1. Potency analysis<br>2. Mycotoxin screening*<br>3. Residual solvent test   |
| Concentrate or extract made with ethanol  | 1. Potency analysis<br>2. Mycotoxin screening*<br>3. Residual solvent test   |
| Concentrate or extract made with approved food-grade solvent  | 1. Potency analysis<br>2. Microbiological screening*<br>3. Mycotoxin screening*<br>4. Residual solvent test                            |
| Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash   | 1. Potency analysis<br>2. Microbiological screening<br>3. Mycotoxin screening  |
| Infused cooking oil or fat in solid form  | 1. Potency analysis<br>2. Microbiological screening*<br>3. Mycotoxin screening*  |

\* Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

~~(d) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:~~

| <b>Product</b>                        | <b>Test(s) Required End Products</b> |
|---------------------------------------|--------------------------------------|
| Infused solid edible                  | Potency analysis                     |
| Infused liquid (like a soda or tonic) | Potency analysis                     |
| Infused topical                       | Potency analysis                     |

| Product   | Test(s) Required End Products |
|---|-------------------------------|
| Marijuana mix packaged (loose or rolled)                | Potency analysis              |
| Marijuana mix infused (loose or rolled)                 | Potency analysis              |
| Concentrate or marijuana-infused product for inhalation | Potency analysis              |

~~(c) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.~~

~~(3) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion and successful passage of quality assurance testing as required in this section, except:~~

~~(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under the same UBI number prior to quality assurance testing; and~~

~~(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality assurance testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section.~~

~~(4) **Samples, lots, or batches that fail quality assurance testing.**~~

~~(a) Upon approval by the WSLCB, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality assurance tests required in this section before it may be sold.~~

~~(b) **Retesting.** At the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest. Potency retesting will generally not be authorized.~~

~~(c) **Remediation.** Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying marijuana products derived from the remediated harvest, lot, or batch; or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section.~~

~~(5) **Referencing.** Certified labs may reference samples for mycotoxin, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.~~

~~(6) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this section.~~

~~(7) Upon the request of the WSLCB or its designee, a licensee or a certified lab must provide an employee of the WSLCB or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of heavy metals, and used for other quality assurance tests deemed necessary by the WSLCB.)~~

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to conduct the following fields of testing:

- (i) Water activity;
- (ii) Potency analysis;
- (iii) Foreign matter inspection;
- (iv) Microbiological screening;
- (v) Mycotoxin screening;
- (vi) Pesticide screening; and
- (vii) Residual solvent screening.

(b) Certified labs may be certified for heavy metal testing. Certified labs must comply with the guidelines for each quality control field of testing described in this chapter if they offer that testing service.

(c) Certified labs may reference samples for mycotoxin, heavy metal, or pesticide testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors. Certified labs must also verify if any unused portion of the sample is destroyed after the completion of required testing.

(b) Certified labs must report quality control test results directly to the board in the required format.

(c) Product must not be converted, transferred, or sold by the licensee until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(f) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(3) **Quality control analysis and screening.** The following analysis and screening are only required for samples that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

(A)

| <u>Cannabinoid</u>        | <u>Lower Limit of Quantitation (mg/g)</u> | <u>CAS #</u>      |
|---------------------------|---|-------------------|
| <u>CBD</u>                | <u>1.0</u>                                | <u>13956-29-1</u> |
| <u>CBDA</u>               | <u>1.0</u>                                | <u>1244-58-2</u>  |
| <u>Δ<sup>9</sup>-THC</u>  | <u>1.0</u>                                | <u>1972-08-3</u>  |
| <u>Δ<sup>9</sup>-THCA</u> | <u>1.0</u>                                | <u>23978-85-0</u> |

(B) Total THC;

(C) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 × M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 × M CBDA).

(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Water activity testing.** The sample fails quality control testing for water activity if the results exceed the following limits:

(i) Water activity rate of more than 0.65 a<sub>w</sub> for useable marijuana;

(ii) Water activity rate of more than 0.85 a<sub>w</sub> for solid edible products.

(c) **Foreign matter screening.** The sample fails quality control testing for foreign matter screening if the results exceed the following limits:

(i) Five percent of stems 3 mm or more in diameter; or

(ii) Two percent of seeds or other foreign matter; or

(iii) One insect fragment, one hair, or one mammalian excreta in sample.

(d) **Microbiological screening.** The sample and the related population fails quality control testing for microbiological screening if the results exceed the following limits:

| <u>Unprocessed Plant Material</u>                    | <u>Colony Forming Unit per Gram (CFU/g)</u> |
|--|---|
| <u>Bile Tolerant Gram Negative bacteria (BTGN)</u>   | <u>1.0 * 10<sup>4</sup></u>                 |
| <u>Shiga toxin-producing Escherichia coli (STEC)</u> | <u>&lt;1</u>                                |
| <u>Salmonella spp.</u>                               | <u>&lt;1</u>                                |
| <u>Processed Plant Material</u>                      | <u>Colony Forming Unit per Gram (CFU/g)</u> |
| <u>Bile Tolerant Gram Negative bacteria (BTGN)</u>   | <u>1.0 * 10<sup>3</sup></u>                 |
| <u>Shiga toxin-producing Escherichia coli (STEC)</u> | <u>&lt;1</u>                                |
| <u>Salmonella spp.</u>                               | <u>&lt;1</u>                                |

(e) **Mycotoxin screening.** The sample and the related population fails quality control testing if the results exceed the following limits:

| Mycotoxin                   | µg/kg | CAS #     |
|-----------------------------|-------|-----------|
| Aflatoxins (Sum of Isomers) | 20.   |           |
| • Aflatoxin B1              |       | 1162-65-8 |
| • Aflatoxin B2              |       | 7220-81-7 |
| • Aflatoxin G1              |       | 1165-39-5 |
| • Aflatoxin G2              |       | 7241-98-7 |
| Ochratoxin A                | 20.   | 303-47-9  |

(f) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and the related population fails quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for any class one solvents as defined in *United States Pharmacopoeia USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

| Solvent                        | µg/g         | ppm (simplified) | CAS #    |
|--------------------------------|--------------|------------------|----------|
| Acetone                        | $5.0 * 10^3$ | 5000             | 67-64-1  |
| Benzene                        | 2.0          | 2                | 71-43-2  |
| Butanes (Sum of Isomers)       | $5.0 * 10^3$ | 5000             |          |
| • n-butane                     |              |                  | 106-97-8 |
| • 2-methylpropane (isobutane)  |              |                  | 75-28-5  |
| Cyclohexane                    | $3.9 * 10^3$ | 3880             | 110-82-7 |
| Chloroform                     | 2.0          | 2                | 67-66-3  |
| Dichloromethane                | $6.0 * 10^2$ | 600              | 75-09-2  |
| Ethanol                        | $5.0 * 10^3$ | 5000             | 64-17-5  |
| Ethyl acetate                  | $5.0 * 10^3$ | 5000             | 141-78-6 |
| Heptanes (Single Isomer)       | $5.0 * 10^3$ | 5000             |          |
| • n-heptane                    |              |                  | 142-82-5 |
| Hexanes (Sum of Isomers)       | $2.9 * 10^2$ | 290              |          |
| • n-hexane                     |              |                  | 110-54-3 |
| • 2-methylpentane              |              |                  | 107-83-5 |
| • 3-methylpentane              |              |                  | 96-14-0  |
| • 2,2-dimethylbutane           |              |                  | 75-83-2  |
| • 2,3-dimethylbutane           |              |                  | 79-29-8  |
| Isopropanol (2-propanol)       | $5.0 * 10^3$ | 5000             | 67-63-0  |
| Methanol                       | $3.0 * 10^3$ | 3000             | 67-56-1  |
| Pentanes (Sum of Isomers)      | $5.0 * 10^3$ | 5000             |          |
| • n-pentane                    |              |                  | 109-66-0 |
| • methylbutane (isopentane)    |              |                  | 78-78-4  |
| • dimethylpropane (neopentane) |              |                  | 463-82-1 |
| Propane                        | $5.0 * 10^3$ | 5000             | 74-98-6  |

| <u>Solvent</u>                        | <u>µg/g</u>                 | <u>ppm (simplified)</u> | <u>CAS #</u>    |
|---------------------------------------|-----------------------------|-------------------------|-----------------|
| <u>Toluene</u>                        | <u>8.9 * 10<sup>2</sup></u> | <u>890</u>              | <u>108-88-3</u> |
| <u>Xylenes (Sum of Isomers)</u>       | <u>2.2 * 10<sup>3</sup></u> | <u>2170</u>             |                 |
| • <u>1,2-dimethylbenzene (ortho-)</u> |                             |                         | <u>95-47-6</u>  |
| • <u>1,3-dimethylbenzene (meta-)</u>  |                             |                         | <u>108-38-3</u> |
| • <u>1,4-dimethylbenzene (para-)</u>  |                             |                         | <u>106-42-3</u> |

(g) Heavy metal screening. Heavy metal screening is required for all DOH compliant product as described in chapter 246-70 WAC. Heavy metal screening is optional for non-DOH compliant product; however, heavy metal limits provided below apply to all products. Any product exceeding the provided limits is subject to recall and destruction. The board may conduct random or investigation driven heavy metal screening for compliance. A sample and related quantity of product fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

| <u>Metal</u>   | <u>µg/g</u> |
|----------------|-------------|
| <u>Arsenic</u> | <u>2.0</u>  |
| <u>Cadmium</u> | <u>0.82</u> |
| <u>Lead</u>    | <u>1.2</u>  |
| <u>Mercury</u> | <u>0.40</u> |

(h) Pesticide screening. For purposes of pesticide screening, a sample and the related quantity of marijuana is considered to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(4) Required quality control tests. The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same sample.

(a) Marijuana flower. Marijuana flower requires the following quality control tests:

| <u>Product</u>          | <u>Test(s) Required</u>  |
|-------------------------|--|
| <u>Marijuana flower</u> | <u>1. Water activity testing</u><br><u>2. Potency analysis</u><br><u>3. Foreign matter inspection</u><br><u>4. Microbiological screening</u><br><u>5. Mycotoxin screening</u><br><u>6. Pesticide screening</u> |

(b) If marijuana flower will be sold as useable flower, no further testing is required.

(c) Intermediate products. Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) Marijuana mix must be chopped or ground so no particles are greater than 3 mm; and

(iv) Intermediate products require the following quality assurance tests:

| <b><u>Intermediate Product Type</u></b>  | <b><u>Tests Required</u></b>   |
|--|--|
| <u>Marijuana mix</u>   | <ol style="list-style-type: none"> <li>1. <u>Water activity testing</u></li> <li>2. <u>Potency analysis</u></li> <li>3. <u>Foreign matter inspection</u></li> <li>4. <u>Microbiological screening</u></li> <li>5. <u>Mycotoxin screening</u></li> <li>6. <u>Pesticide screening</u></li> </ol> |
| <u>Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)</u> | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Mycotoxin screening</u></li> <li>3. <u>Residual solvent test</u></li> <li>4. <u>Pesticide screening</u></li> </ol>  |
| <u>Concentrate or extract made with a CO<sub>2</sub> extractor like hash oil</u>   | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Mycotoxin screening</u></li> <li>3. <u>Residual solvent test</u></li> <li>4. <u>Pesticide screening</u></li> </ol>  |
| <u>Concentrate or extract made with ethanol</u>  | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Mycotoxin screening</u></li> <li>3. <u>Residual solvent test</u></li> <li>4. <u>Pesticide screening</u></li> </ol>  |
| <u>Concentrate or extract made with approved food grade solvent</u>  | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Microbiological screening</u></li> <li>3. <u>Mycotoxin screening</u></li> <li>4. <u>Residual solvent test</u></li> <li>5. <u>Pesticide screening</u></li> </ol>   |
| <u>Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash</u>   | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Microbiological screening</u></li> <li>3. <u>Mycotoxin screening</u></li> <li>4. <u>Pesticide screening</u></li> </ol>  |
| <u>Infused cooking oil or fat in solid form</u>  | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Microbiological screening</u></li> <li>3. <u>Mycotoxin screening</u></li> <li>4. <u>Pesticide screening</u></li> </ol>  |

(d) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:

| <b><u>End Product Type</u></b>                                 | <b><u>Tests Required</u></b>   |
|--|--|
| <u>Infused solid edible</u>                                    | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> <li>2. <u>Water activity testing</u></li> </ol> |
| <u>Infused liquid (like a soda or tonic)</u>                   | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> </ol>   |
| <u>Infused topical</u>   | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> </ol>   |
| <u>Marijuana mix packaged (loose or rolled)</u>                | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> </ol>   |
| <u>Marijuana mix infused (loose or rolled)</u>                 | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> </ol>   |
| <u>Concentrate or marijuana-infused product for inhalation</u> | <ol style="list-style-type: none"> <li>1. <u>Potency analysis</u></li> </ol>   |

(e) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Useable flower, a batch of marijuana concentrate, or a batch of marijuana-infused product may not be sold until the completion and successful passage of required quality control testing, except:

(a) Licensees may wholesale and transfer batches or quantities of marijuana flower and other material that will be extracted, and marijuana mix and nonsolvent extracts, for the purposes of further extraction prior to completing required quality control testing.

(b) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under the same UBI number prior to quality control testing.

(c) Licensees may wholesale and transfer failed batches or quantities of marijuana flower to be extracted pursuant to subsection (6) of this section, unless failed for tests that require immediate destruction.

(6) **Failed test samples.**

(a) Upon approval by the board, failed quantities of marijuana or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) Retesting. A producer or processor must request retesting. The board may authorize the retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) Remediation. Remediation is a process or technique applied to quantities of marijuana flower, lots, or batches. Remediation may occur after the first failure, depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed marijuana flower, lots, or batches so long as the remediation method does not impart any toxic or harmful substance to the useable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated marijuana flower, lot, or batch; or

(D) The consumer upon request.

(ii) The entire quantity of marijuana from which the failed sample(s) were deducted must be remediated.

(iii) No remediated quantity of marijuana may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed quantity of remediated marijuana is not remediated or reprocessed in any way after a first failure, it cannot be retested. Any subsequent certificates of analysis produced without remediation or reprocessing of the failed quantity of marijuana will not supersede the original compliance testing certificate of analysis.

(7) **Referencing.** Certified labs may reference samples for mycotoxins, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, de-

livery personnel, sample ID numbers, field of testing, and receiving personnel.

(8) Certified labs are not limited in the amount of useable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) A certificate of analysis issued by a certified lab for any marijuana product subject to the requirements of this chapter that has not already been transferred to a retail location expires 12 calendar months after issuance.

(10) The board, or its designee, may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products, or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random or investigatory compliance checks. Samples may be randomly screened and used for other quality control tests deemed necessary by the board.

(11) All marijuana products produced, processed, distributed, or sold after the effective date of these rules, must comply with these rules and this chapter; however, postharvest products in the possession of or being processed by a licensee that do not comply with these rules as of their effective date may be sold, distributed, or both within a reasonable period of time, determined by the board.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-102, filed 5/31/17, effective 8/31/17; WSR 16-11-110, § 314-55-102, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-102, filed 5/20/15, effective 6/20/15; WSR 14-07-116, § 314-55-102, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-102, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

**WAC 314-55-1025 Proficiency testing.** (1) For the purposes of this (~~section~~) chapter, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the ((WSLCB)) board to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The ((WSLCB)) board or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from ((WSLCB or WSLCB's)) the board or the board's vendor prior to conducting PT. The ((WSLCB)) board may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least ((eighty)) 80 percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed ((eighty)) 80 percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the ((WSLCB or WSLCB's)) board or the board's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by ((WSLCB or WSLCB's)) the board or the board's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results ~~((used for certification and/or remediation of failed studies to WSLCB or WSLCB's))~~ at the same time, whether pass or fail, to the laboratory and the board, or the board's vendor.

(11) The ~~((WSLCB))~~ board may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The ~~((WSLCB))~~ board may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by ~~((WSLCB))~~ the board.

(13)(a) The ~~((WSLCB))~~ board will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The ~~((WSLCB))~~ board may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from ~~((a WSLCB or WSLCB's))~~ the board or the board's vendor approved PT provider, so long as the supplemental PT studies are performed at least ~~((fifteen))~~ 15 days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The ~~((WSLCB))~~ board will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. ~~((WSLCB))~~ The board may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the ~~((WSLCB))~~ board a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a ~~((WSLCB or WSLCB's))~~ board or board's vendor approved PT provider. The supplemental PT studies must be performed at least ~~((fifteen))~~ 15 days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-1025, filed 5/31/17, effective 8/31/17.]