WSR 22-19-080
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY
[Filed September 20, 2022, 10:46 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

Title of Rule and Other Identifying Information: SWCAA 400-025 Adoption of Federal Rules. Existing rule section establishing an adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions. Existing rule section containing definitions for words and phrases used throughout SWCAA 400.

SWCAA 400-040 General Standards for Maximum Emissions. Existing rule section containing a minimum set of air emission standards applicable to all sources.

SWCAA 400-045 Permit Application for Nonroad Engines. Existing rule section identifying requirements for nonroad engine permit applications.

SWCAA 400-070 General Requirements for Certain Source Categories. Existing rule section containing minimum air emission standards and work practices for selected source categories.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. Existing rule section containing air emission standards, work practices, and monitoring/reporting requirements that may be used in lieu of New Source Review for selected small source categories.

SWCAA 400-100 Registration Requirements. Existing rule section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. Existing rule section describing air contaminant sources exempt from registration requirements.

SWCAA 400-105 Records, Monitoring and Reporting. Existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. Existing rule section that establishes minimum standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-109 Air Discharge Permit Applications. Existing rule section identifying requirements for the submission and content of Air Discharge Permit applications.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). Existing rule section identifying requirements for the processing and approval of Air Discharge Permit applications.

SWCAA 400-115 Standards of Performance for New Sources. Existing rule section adopting by reference federal standards for new sources contained in 40 C.F.R. Part 60.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. Existing rule section identifying presumptive requirements for new exhaust stack installations and describing the procedure by which the maximum creditable stack height is to be determined.

SWCAA 400-290 Severability. Existing rule section addressing severability of provisions in SWCAA 400.

SWCAA 400, Appendix C - Federal Standards Adopted by Reference. Existing rule section containing informational lists of all federal

regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

Hearing Location(s): On November 30, 2022, at 6:00 p.m., virtual online hearing. Contact agency to register for online hearing.

Date of Intended Adoption: January 5, 2023.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email wess@swcleanair.org, fax 360-576-0925, by November 30, 2022.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 ext. 110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by December 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 Adoption of Federal Rules. The proposed rule changes update the adoption by reference date for federal regulations cited in other sections of SWCAA 400.

SWCAA 400-030 Definitions. The proposed rule change updates the definition for volatile organic compound.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes make administrative edits and remove "A" reference in section (1)(f).

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes revise the explanation of application fees.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes remove affirmative New Source Review applicability citations from section (12), add a pool heater exemption in section (13)(b), adopt the federal plan found in 40 C.F.R. 62, Subpart OOO, and make administrative edits.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes add an Environmental Protection Agency test method citation for small boilers/heaters, add gasoline to list of allowable fuels for emergency service engines, add a 40 C.F.R. 60, Subpart JJJJ citation for emergency service engines, and make administrative edits.

SWCAA 400-100 Registration Requirements. The proposed rule changes revise the description of registration fees and make administrative edits.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed rule changes add registration exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units and make administrative edits.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes change term "source" to "stationary source" in selected sections to improve clarity.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes revise emission test report submission requirements and make administrative edits.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes add a section specifying equipment subject to mandatory permitting, add exemptions for gas-fired rooftop comfort heating units and gas-fired freeze protection units, and make administrative edits.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes revise application completeness criteria to include applicable fees and make administrative edits.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes remove the adoption exemption for 40 C.F.R. 60,

Subpart JJJJ, revise the adoption exemption for 40 C.F.R. 60, Subparts TTTT and UUUUa, and make administrative edits.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed rule changes make administrative edits.

SWCAA 400-290 Severability. The proposed rule changes revise existing language for greater consistency with similar language in other statutes.

SWCAA 400, Appendix C - FEDERAL STANDARDS ADOPTED BY REFERENCE. The proposed rule changes update the lists of adopted federal regulations.

Reasons Supporting Proposal: The proposed changes are necessary to support the agency's implementation of the Washington state Clean Air Act and associated federal standards.

Statutory Authority for Adoption: RCW 70A.15.2040(1).

Statute Being Implemented: RCW 70A.15.2040(1).

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

Name of Proponent: Southwest Clean Air Agency (SWCAA), governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 126; Implementation: Clint Lamoreaux, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 131; and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 ext. 122.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70A.15.2040(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

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

Is exempt under RCW 70A.15.2040(1).

Explanation of exemptions: Pursuant to RCW 70A.15.2040(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

September 20, 2022
Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-025 Adoption of Federal Rules

Federal rules cited in this rule are adopted by reference as in effect on ((~~May 1, 2021~~)) September 1, 2022.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-030 Definitions

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

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

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the "emission unit" actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal "source" operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal "source" operation. Actual emissions shall be calculated using the "emission unit's" actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

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

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

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

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

(4) **"Air contaminant"** or **"air pollutant"** means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. For the purposes of regulation under the Washington SIP, "air contaminant" means only:

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

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

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

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

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

(8) **"Allowable emissions"** means the emission rate of a "stationary source" calculated using the maximum rated capacity of the "stationary source" (unless the "stationary source" is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

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

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

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

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

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

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

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

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

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

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

(15) **"Best available control technology"** (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70A.15 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62 and 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

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

(18) **"Bubble"** means a set of emission limits which allows an increase in emissions from a given "emission unit" in exchange for a decrease in emissions from another "emission unit", pursuant to RCW 70A.15.2240 and SWCAA 400-120.

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

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

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

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

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

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

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

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

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

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

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

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

(27) **"Continuous emission monitoring system" (CEMS)** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis. (ref. 40 CFR 51.166 (b)(43))

(28) **"Continuous emission rate monitoring system" (CERMS)** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time). (ref. 40 CFR 51.166 (b)(46))

(29) **"Continuous parameter monitoring system" (CPMS)** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis. (ref. 40 CFR 51.166 (b)(45))

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

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

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

(33) **"Diesel"** means fuel oil that complies with the specifications for diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975.

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

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

(36) **"Distillate oil"** means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396, diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975, kerosene, as defined by the American Society of Testing and Materials in ASTM D3699, biodiesel as defined by the American So-

ciety of Testing and Materials in ASTM D6751, or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467.

(37) **"Ecology"** means the Washington State Department of Ecology.

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

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

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

(41) **"Emission reduction credit"** (ERC) means a credit granted pursuant to SWCAA 400-131. This is a voluntary reduction in emissions beyond required levels of control.

(42) **"Emission standard"** and **"emission limitation"** mean a requirement established under the Federal Clean Air Act, Chapter 70A.15 RCW or a local regulation that limits the quantity, rate, or concentration of air contaminant emissions on a continuous basis, including any requirement relating to the operation or maintenance of a "stationary source" to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or Chapter 70A.15 RCW.

(43) **"Emission unit"** means any part of a "stationary source" that emits or would have the potential to emit any air pollutant subject to regulation under the Federal Clean Air Act, Chapter 70A.15 RCW, or Chapter 70.98 RCW.

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

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

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

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

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

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

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

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

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

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

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,
(xiv) Coke oven batteries,
(xv) Sulfur recovery plants,
(xvi) Carbon black plants (furnace process),
(xvii) Primary lead smelters,
(xviii) Fuel conversion plants,
(xix) Sintering plants,
(xx) Secondary metal production plants,
(xxi) Chemical process plants,
(xxii) Fossil-fuel boilers of more than 250 million British thermal units per hour heat input,
(xxiii) Petroleum storage and transfer units with a total capacity exceeding 300,000 barrels,
(xxiv) Taconite ore processing plants,
(xxv) Glass fiber processing plants,
(xxvi) Charcoal production plants; and

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

(d) For purposes of determining whether a stationary source is an existing stationary facility the term "building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant emitting activities shall be considered as part of the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

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

(49) **"Federal Class I area"** means any federal land that is classified or reclassified as Class I. The Federal Class I areas in Washington State are as follows:
(a) Alpine Lakes Wilderness;
(b) Glacier Peak Wilderness;
(c) Goat Rocks Wilderness;
(d) Mount Adams Wilderness;
(e) Mount Rainier National Park;
(f) North Cascades National Park;
(g) Olympic National Park; and
(h) Pasayten Wilderness.

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

(51) **"Federally enforceable"** means all limitations and conditions which are enforceable by the EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or any order of approval established under a SIP approved

new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091 or SWCAA 400-091.

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

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

(54) **"Fugitive emissions"** means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

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

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

(58) **"Greenhouse gas"** means, for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

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

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

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

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

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of "stationary source," unless the owner or operator of the proposed new or modified "stationary source" demonstrates that such limitations are not achievable; or

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

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

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

(65)(a) **"Major modification,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas means the same as the definition found in SWCAA 400-810.

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

(66)(a) **"Major stationary source,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

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

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

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

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

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

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

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

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

(2) The vehicle lacks features customarily associated with safe and practical street or highway use, such features including, but not

being limited to, a reverse gear (except in the case of motorcycles), a differential, or safety features required by state and/or federal law; or

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

(73) **"National Ambient Air Quality Standard"** (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM_{10}, $PM_{2.5}$), ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

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

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

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

(77)(a) **"Net emissions increase,"** as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

(78) **"New source"** means one or more of the following:

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

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

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

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

(e) Relocation of a "stationary source" to a new location, except in the case of portable sources operating under a valid portable source permit as provided in SWCAA 400-036 and 400-110(6);

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

(g) Nonroutine replacement or modification of a boiler shell and/or tubes without replacement of the associated burner(s); or

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

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

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

(81) **"Nonroad engine"** means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(89) **"Order"** means any regulatory order issued by the Agency or Ecology pursuant to Chapter 70A.15 RCW, including, but not limited to RCW 70A.15.3010, 70A.15.2220, 70A.15.2210 and 70A.15.2040(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

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

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

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

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

(94)**"Parts per million by volume"** (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulates.

(95) **"Permanent shutdown"** means permanently stopping or terminating the operation of a "stationary source" or "emission unit." Except as provided in subsections (a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees.

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

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

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

(96) **"Permitting agency"** means ecology or the local air pollution control agency with jurisdiction over a "source."

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

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

(99) **"PM_{10}"** 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.

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

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

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

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

(104) **"Portable source"** means a "stationary source" consisting of one or more "emission units" that is portable or transportable and capable of being operated at multiple locations. Portable source includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

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

(106) **"Predictive emissions monitoring system"** (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis. (ref 40 CFR 51.166 (b)(44))

(107) **"Prevention of Significant Deterioration"** (PSD) means the program set forth in WAC 173-400-700 through WAC 173-400-750.

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

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

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

(111) "**Regulatory order**" means an order issued by the Agency or Ecology to an air contaminant source to achieve compliance with any applicable provision of Chapter 70A.15 RCW, rules adopted thereunder, or the regulations of the Agency. Note: For further clarification, refer to the definitions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

(112) "**Residual Oil**" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

(113) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the "major stationary source" or "major modification." Secondary emissions do not include any emissions that come directly from a mobile source, such as tailpipe emissions from a motor vehicle, train, or vessel.

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

(115)(a) "**Significant,**" as it applies to "stationary sources" subject to requirements for "new sources" in nonattainment areas, means the same as the definition found in SWCAA 400-810.

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

(116) "**SIP**" means the same as "State Implementation Plan".

(117) "**Source**" means all of the "emission units" (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same

two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

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

(119) **"Southwest Clean Air Agency"** (SWCAA) means the local clean air agency empowered to enforce and implement the Federal Clean Air Act 42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter 70A.15 RCW) in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

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

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

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

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

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

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

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

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

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

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

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

(131) **"Unclassifiable area"** means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard

for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.

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

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

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

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

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

(137) **"Volatile organic compound"** (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; t-butyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1,-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-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-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1.2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane

(HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (HFE-347pcf2); cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z) and perfluorocarbon compounds that fall into these classes:

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

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

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

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

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

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

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

(i) Tertiary butyl acetate.

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

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-040 General Standards for Maximum Emissions

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

All "emission units" are required to use reasonably available control technology (RACT) that may be determined for some "stationary sources" or "source categories" to be more stringent than the applicable emission limitations of this regulation or any Chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Agency shall, as provided in RCW 70A.15.2230, define RACT for each "stationary source" or "source category" and issue a rule or regulatory order requiring the installation of RACT.

(1) **Visible emissions.** No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant which at the emission point, or within a reasonable distance of the emission point, exceeds twenty percent opacity as determined in accordance with SWCAA Method 9, Ecology Method 9A or 9A-Alternate 1 (LIDAR) except as follows:

(a) Soot blowing/grate cleaning. When emissions occur due to soot blowing/grate cleaning of a hog fuel or wood-fired boiler, visible emissions ((~~shall~~)) must not exceed forty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. Except for testing and troubleshooting, soot blowing/grate cleaning is to be scheduled for the same approximate times each day. The boiler operator ((~~shall~~)) must maintain a written schedule on file with the Agency and provide updates as necessary.

(b) When the owner or operator of an "emission unit" supplies valid data to show that the presence of uncombined water is the only reason for the opacity to exceed twenty percent or an alternative opacity standard established in this section.

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

(d) When an alternate opacity limit has been established per RCW 70A.15.3000 (2)(c).

(e) Alternative Standard for Boiler Startup or Shutdown. Hog fuel or wood-fired boiler in operation before January 24, 2018. For emissions that occur due to planned startup or shutdown of a hog fuel or wood-fired boiler with dry particulate matter controls, an owner or operator may use the alternative standard in this subsection when all of the requirements below are met.

(i) The owner or operator notifies the permitting authority at least twenty-four hours prior to the planned boiler startup or shutdown or within two hours of restarting the boiler within twenty-four hours after the end of an unplanned shutdown (i.e., malfunction or upset).

(ii) Startup begins when fuel is ignited in the boiler fire box.

(iii) Startup ends when the boiler starts supplying useful thermal energy or four hours after the boiler starts supplying useful thermal energy if the facility follows the work practices in (e)(vi)(B) of this subsection.

(iv) Shutdown begins when the boiler no longer supplies useful thermal energy or when no fuel is being fed to the boiler or process heater, whichever is earlier.

(v) Shutdown ends when the boiler or process heater no longer supplies useful thermal energy and no fuel is being combusted in the boiler.

(vi) Alternative standard.

(A) Visible emissions during startup or shutdown ((~~shall~~)) must not exceed forty percent opacity for more than three minutes in any hour, as determined by SWCAA Method 9; or

(B) During startup or shutdown, the owner or operator ((~~shall~~)) must:

(I) Operate all continuous monitoring systems;

(II) Use only clean fuel as identified in 5.b. in Table 3 of 40 CFR Part 63, Subpart DDDDD;

(III) Engage all applicable control devices so as to comply with the twenty percent opacity standard within four hours of the start of supplying useful thermal energy;

(IV) Engage and operate particulate matter control devices within one hour of first feeding fuels that are not clean fuels; and

(V) Develop and implement a written startup and shutdown plan. The plan must minimize the startup period according to the manufacturer's recommended procedure. In the absence of manufacturer's recommendation, the owner or operator ((~~shall~~)) must use the recommended startup procedure for a unit of a similar design. The plan must be maintained on-site and available upon request for public inspection.

(vii) The owner or operator maintains records sufficient to demonstrate compliance with (e)(i) through (vi) of this subsection. The records must include the following:

(A) The date and time of notification of the permitting authority;

(B) The date and time when startup and shutdown began;

(C) The date and time when startup and shutdown ended; and

(D) The compliance option in (e)(vi) of this subsection that was chosen and documentation of how the conditions of that option were met.

(f) Furnace refractory curing. For emissions that occur during curing of furnace refractory in a lime kiln or boiler, visible emissions (as determined by SWCAA Method 9((~~A~~))) ((~~shall~~)) must not exceed forty percent opacity for more than three minutes in any hour, except when (b) of this subsection applies. For this provision to apply, the owner or operator ((~~shall~~)) must meet all of the following requirements:

(i) The total duration of refractory curing ((~~shall~~)) must not exceed thirty-six hours;

(ii) Use only clean fuel identified in 5.b. in Table 3 in 40 CFR Part 63, Subpart DDDDD;

(iii) Provide a copy of the manufacturer's instructions on curing refractory to the permitting authority;

(iv) Follow the manufacturer's instructions on curing refractory, including all instructions on temperature increase rates and holding temperatures and time;

(v) Engage the emission controls as soon as possible during the curing process; and

(vi) Notify the permitting authority at least one working day prior to the start of the refractory curing process.

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

(i) ((~~No~~)) Visible emissions ((~~shall~~)) must not cross the boundary of the military training site/reservation.

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

(h) Certification testing. Visible emissions from the "smoke generator" used for testing and certification of visible emissions read-

ers per the requirements of 40 CFR 60, Appendix A, Reference Method 9 and Ecology Methods 9A and 9B ((~~shall be~~)) are exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

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

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

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

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

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

(4) **Odors.**

(a) No person shall cause or allow the generation of any odor from any "source" or activity, which may unreasonably interfere with any other property owner's use and enjoyment of his property. The Agency may take enforcement action under this section if it documents the following:

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

Level 0 No odor detected,

Level 1 Odor barely detected,

Level 2 Odor is distinct and definite, any unpleasant characteristics recognizable,

Level 3 Odor is objectionable enough or strong enough to cause attempts at avoidance, and

Level 4 Odor is so strong that a person does not want to remain present; and

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

(b) When the "source" is using "good agricultural practices," as provided in RCW 70A.15.4530, no violation of this section ((~~shall~~)) will have occurred.

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

(6) **Sulfur dioxide.** No person shall cause or permit the emission of a gas containing sulfur dioxide from any "emission unit" in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent carbon dioxide as required by

the applicable emission standard for combustion sources, and based on the average of any period of sixty consecutive minutes.

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

(8) **Fugitive dust sources.**

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

(b) The owner(s) or operator(s) of any existing "stationary source(s)" of fugitive dust that has been identified as a significant contributor to a PM_{10} or $PM_{2.5}$ nonattainment area ((~~shall be required to~~)) must use reasonably available control technology (RACT) to control emissions. The status of a "stationary source" as a significant contributor will be determined by the criteria found in SWCAA 400-113(3).

Reviser's note: The typographical 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.

Reviser's note: The unnecessary underscoring and strikethrough 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-045 Permit Application for Nonroad Engines

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

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for those identified in section (3) below.

(3) Exemptions

(a) Engines operating in SWCAA jurisdiction prior to November 9, 2003;

(b) Nonroad engine installations with an aggregate power rating less than 500 horsepower not associated with stationary sources;

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

(d) Small/residential water well drilling rigs;

(e) Portable firefighting equipment;

(f) Mobile cranes and pile drivers;

(g) Engines used for emergency flood control;

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

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

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

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

(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt

plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.

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

(5) **((Application)) Fees.** ((~~A filing fee plus a review fee, as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, shall be submitted with the application prior to Agency review.~~

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

Before the Agency may review a permit application or issue a permit, the applicant must submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

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

(7) **Withdrawn or exempt applications.**

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

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

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

Reviser's note: The unnecessary underscoring and strikethrough 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-070 General Requirements for Certain Source Categories

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

(2) **Hog fuel boilers.**

(a) Hog fuel boilers ((~~shall~~)) must meet all provisions of SWCAA 400-040 and 400-050(1).

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

(3) **Orchard heating.**

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

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

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

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

(6) **Gasoline dispensing facilities.**

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

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

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

(7) **Perchloroethylene dry cleaners.**

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

(b) Applicability.

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

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
(1) Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr
(2) Only Transfer Machines	200 gallons PCE/yr	200-1,800 gallons PCE/yr	1,800 gallons PCE/yr
(3) Both Dry-to-Dry and Transfer Machines	140 gallons PCE/yr	140-1,800 gallons PCE/yr	1,800 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on July 1, 2002).

(c) Operations and maintenance record.

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

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

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

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

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

(C) Refrigerated condenser information. If a refrigerated condenser is being used, record the following information:

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

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

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

(IV) The date the temperature was taken;

(D) Carbon adsorber information. If a carbon adsorber is being used, record the following information:

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

(II) The date the concentration was measured;

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

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

(G) All receipts of PCE purchases; and

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

(d) General operations and maintenance requirements:

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

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

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

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

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

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

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

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.

(e) Inspection.

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

TABLE 3. Minimum Inspection Frequency

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

(ii) An inspection must include an examination of these components for condition and perceptible leaks:

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

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

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

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

(f) Repair requirements:

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

(ii) If repair parts are unavailable, they must be ordered within 2 business days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than 5 business days after arrival.

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

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

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

(i) Outlet air temperature requirements:

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

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

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

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

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

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

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

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

(ii) Inlet air temperature requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible.

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

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

(8) **Abrasive blasting.**

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

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

(c) All abrasive blasting of materials that contain, or have a coating that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance ((~~shall~~)) must be analyzed prior to blast operations. If a toxic or hazardous material is present in the blast media or removed media, all material ((~~shall~~)) must be handled and disposed of in accordance with applicable regulations.

(9) **Sewage sludge incinerators.**

(a) Standards for the incineration of sewage sludge found in 40 CFR 503, Subparts A (General Provisions) and E (Incineration) are adopted by reference (as in effect on the date cited in SWCAA 400-025).

(b) The federal plan found under 40 CFR 62 Subpart LLL is adopted by reference (as in effect on the date cited in SWCAA 400-025).

(10) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on the date cited in SWCAA 400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See SWCAA 400-115(1) for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the Agency.

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

(c) Standards for MSW landfill emissions:

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

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

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

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

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

(e) Test methods and procedures:

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

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

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

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

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

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

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

(ii) The landfill has a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions ((~~shall~~)) must be documented and submitted with the report; and

(iii) The landfill has an NMOC emission rate of 50 megagrams per year or greater.

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

(h) Gas collection and control systems:

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

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

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

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

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

(A) An open flare designed and operated according to 40 CFR 60.18;

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

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

(i) Air operating permit:

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

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

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

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

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

(11) **Used oil burners.**

(a) Applicability. The requirements of this section apply to all combustion sources except the following:

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

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

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

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

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

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

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

(b) Requirements. ((~~No person shall burn as fuel~~)) Used oil ((~~that~~)) burned as fuel must not exceed((~~s~~)) any of the following specification levels:

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;
(iii) Cadmium - 2 ppm maximum;
(iv) Chromium - 10 ppm maximum;
(v) Lead - 100 ppm maximum;
(vi) Polychlorinated biphenyls (PCB's) - 2 ppm maximum;
(vii) Sulfur - 1.0 percent maximum;
(viii) Flash point - 100°F minimum; and
(ix) Total halogens - 1,000 ppm maximum.

(12) **Coffee roasters.**

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

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

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

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

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

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

(13) **Natural gas fired water heaters.**

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

(b) Requirements.

(i) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO_x at levels in excess of 55 ppmv at 3% O_2, dry (0.067 lb per million Btu of heat input).

(ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater (excluding pool heaters) that emits NO_x at levels in excess of 20 ppmv at 3% O_2, dry (0.024 lb per million Btu of heat input).

(14) **Rendering plants.**

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

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

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

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

(15) **Outdoor wood-fired boilers.**

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

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

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

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

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

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

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

(d) Outdoor wood-fired boilers ((~~shall~~)) must only be fired on clean dry wood, wood pellets made from clean wood, or fuels recommended by the manufacturer of the outdoor wood-fired boiler. The owner or operator of an outdoor wood-fired boiler ((~~shall~~)) must follow manufacturer-recommended fuel loading times and amounts. ((~~In no case, shall a~~)) An outdoor wood-fired boiler must not be fired on any prohibited fuel cited in WAC 173-433.

(16) **Cyclonic Burn Barrel Type Incinerators.** Use of cyclonic burn barrel type incinerators is prohibited effective January 1, 2022 except for special circumstances approved in advance by SWCAA.

(17) **Municipal Solid Waste Landfills.** The federal plan found under 40 CFR 62 Subpart OOO is adopted by reference (as in effect on the date cited in SWCAA 400-025).

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

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

Reviser's note: The unnecessary underscoring and strikethrough 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to SWCAA 400-072(2) is intended to take the place of an air discharge permit application in regards to approval of new "emission units". An air discharge permit application as described in SWCAA 400-109 is not required for an affected "emission unit" if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. No SUN is required if a source is exempt under SWCAA 400-109. "Emission units" subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are subject to major New Source Review.

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

(1) **Exceptions.**

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

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

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

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

A complete notification includes, but is not limited to, the following:

(a) Location of installation and/or operation;

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

(c) Applicable processing fee;

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

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

(f) Control equipment specifications;

(g) Vendor performance guarantees; and

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

(3) **Processing fee.** Each notification ((~~shall~~)) must be accompanied by the payment of a processing fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

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

(5) **Source categories.**

(a) **Coffee roasters.**

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

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

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

(A) Afterburner operating temperature ((~~shall~~)) must be recorded weekly;

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

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

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

(v) ((~~**Testing**~~)) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

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

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

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

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

(II) Quantity of coffee roasted; and

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

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

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

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

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

(B) Each boiler/heater ((~~shall~~)) must be equipped with combustion technology capable of maintaining NO_x and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O_2, dry, 1-hr avg). EPA test methods from 40 CFR 60, or equivalent, must be used to determine compliance.

(iii) **General requirements.**

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

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

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

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

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

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

(v) ((**~~Testing~~**)) **Emission monitoring requirements.**

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

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O_2, the owner or operator ((~~shall~~)) must either perform 60 minutes of additional monitoring to more accurately quantify

CO and NO_x emissions, or initiate corrective action. Corrective action ((~~shall~~)) must be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action ((~~shall~~)) must be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_x or 50 ppmvd CO, corrected to 3% O_2.

(vi) **Reporting requirements.**

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

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

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

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

(I) Quantity of fuel consumed; and

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

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

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

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

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

(iii) **General requirements.**

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

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

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

(D) Each spark ignition engine must be comply with the provisions of 40 CFR 60 Subpart JJJJ (as in effect on the date cited in SWCAA 400-025).

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

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

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

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

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

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

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

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

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

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

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

(v) ((**~~Testing~~**)) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

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

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

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

(I) Hours of engine operation; and

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

(d) **Non-perchloroethylene dry cleaners.**

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

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

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

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

(iii) **General requirements.**

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

(B) Dry cleaning machines ((~~shall~~)) must use DF-2000 cleaning fluid or an equivalent solvent.

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

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

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

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

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

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

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

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

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

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

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

(v) ((**~~Testing~~**)) **Emission monitoring requirements.** None.

(vi) **Reporting requirements.**

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

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

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

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

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

(e) **Rock Crushing Operations.**

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

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

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

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

(iii) **General requirements.**

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

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

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads ((~~shall~~)) must be watered at reasonable intervals as necessary to control fugitive dust emissions.

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

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" ((~~shall~~)) must comply with the applicable requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

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

attainment area, will not interfere with scheduled attainment of ambient standards.

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

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

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

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

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

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

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

(v) ((**~~Testing~~)) Emission monitoring requirements.** An initial emissions test ((~~shall~~)) must be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing ((~~shall~~)) must be conducted within 90 calendar days of commencing operation. All emission testing ((~~shall~~)) must be conducted in accordance with the requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(vi) **Reporting requirements.**

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

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

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

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

(II) Air emissions of criteria air pollutants.

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

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.

Reviser's note: The unnecessary underscoring 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-100 Registration Requirements

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

(1) **Applicability.** All "sources" or "emission units" ((~~shall~~)) must be registered with the Agency in accordance with this section as set forth in RCW 70A.15.2200. A "source" or "emission unit" is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. "Emission units" that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

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

(i) "Emission units" or activities exempted under SWCAA 400-101; and

(ii) "Stationary sources" required to apply for, or to maintain, an operating permit under chapter 173-401 WAC.

(b) Regardless of the exemptions provided above, the following "sources" must be registered with the Agency:

(i) Gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and

(ii) Dry cleaners with VOC or TAP emissions.

(2) **General requirements.**

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

(b) The owner or operator of a registered "source" ((~~shall~~)) must submit annual reports to the Agency. Each report ((~~shall~~)) must contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70A.15 RCW. The owner, operator, or their designated representative ((~~shall~~)) must sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee ((~~shall~~)) must be paid before the Agency may register any "emission unit". Annual registration fees are typically based on the number of registered "emission units" and the quantity of "source" emissions during the previous calendar year, but may vary based on source category. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or "emission units" that permanently shut down prior to January 1 of the current registration period ((~~shall~~)) are not ((~~be~~)) liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees ((~~shall~~)) will be considered a violation of this section. Annual registration fees ((~~shall~~)) must be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

Exceptions:

(a) An annual registration fee ((~~shall~~)) will be charged to each gasoline transport tank as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a source may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70A.15.1030(17), are not subject to Registration and ((~~shall~~)) must pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year ((~~shall~~)) will be considered delinquent. Pursuant to RCW 70A.15.3160(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an "emission unit" are delinquent for two consecutive years or more, the Agency may revoke the affected "emission unit's" air discharge permit or Order of Approval.

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

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

(i) Legal name of the registered owner or operator;

(ii) Effective date of the shutdown or transfer;

(iii) Comprehensive description of the affected "emission units"; and

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

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

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

(ii) Effective date of the transfer;

(iii) Description of the affected "emission units"; and

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

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

(6) **Inspections.**

(a) Periodic onsite inspections of "emission units" and "sources" ((~~shall~~)) must be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70A.15.2500.

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

the control, recovery, or release of air contaminants to the atmosphere.

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

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

AMENDATORY SECTION (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-101 Emission Units Exempt from Registration Requirements

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

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

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

(3) **Exempt emission thresholds.** A "stationary source" ((~~shall be~~)) is exempt from registration if the uncontrolled potential to emit from all emission units at that site or facility is less than all of the applicable emission thresholds listed below. To qualify for an emission threshold exemption, the owner or operator ((~~shall~~)) must submit to the Agency a summary of all activities/equipment that emit air pollutants, and calculate potential emissions from the facility based on maximum levels of production/operation. The Agency ((~~shall~~)) must review and validate the submitted documentation prior to granting an exemption.

Pollutant	Exemption Threshold
Criteria pollutants and VOC	1.0 tpy, combined
Lead	0.005 tpy (10 lb/yr)
Ozone depleting substances	1.0 tpy, combined (as defined in SWCAA 400-030)
Toxic air pollutants	1.0 tpy (combined) or less than applicable SQER per Chapter 173-460 WAC, whichever is less.

(4) **Exempt equipment and activities.**

(a) Asphalt roofing and application equipment (not manufacturing or storage equipment).

(b) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families.

(c) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes.

(d) Laundering devices, dryers, extractors, or tumblers for fabrics using water solutions of bleach and/or detergents.

(e) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business.

(f) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment).

(g) Retail paint sales establishments (not including manufacturing).

(h) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.

(i) Sewing equipment.

(j) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other structures provided operations are in compliance with the provisions of SWCAA 400-070(8).

(k) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-101(3). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses that do not exceed the emission thresholds specified in SWCAA 400-101(3). This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations.

(l) Residential wood heaters (e.g., fireplaces and woodstoves).

(m) Office equipment, operations and supplies.

(n) Internal combustion engines used for emergency service that have an individual power rating of less than 50 horsepower.

(o) Internal combustion engines used for emergency service that are located at a facility with a maximum ((~~aggregate~~)) combined power rating less than 200 horsepower. In determining the ((~~aggregate~~)) combined power rating of a facility, individual units with a rating of less than 50 horsepower ((~~shall not be~~)) are not considered.

(p) Steam cleaning equipment used exclusively for that purpose.

(q) Refrigeration systems that are not in air pollution control service.

(r) Housekeeping activities and equipment.

(s) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.

(t) Natural and forced air vents and stacks for bathroom/toilet facilities.

(u) Personal care activities.

(v) Lawn and landscaping activities.

(w) Flares used to indicate danger to the public.

(x) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425 and SWCAA 476.

(y) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is

not the primary business activity at the "stationary source" in question.

(z) Natural gas or propane fired, rooftop air heating units operated for the purpose of comfort heating.

(aa) Natural gas or propane fired heating units with individual rated heat inputs of less than 200,000 Btu per hour operated solely for the purpose of freeze protection.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "stationary source" shall maintain records of the type and quantity of emissions from the "stationary source" and other information deemed necessary to determine whether the "stationary source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Stationary sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "stationary sources" shall submit an inventory of emissions from the "stationary source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter PM_{10}, $PM_{2.5}$, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a)Gasoline Stations. Emission reports shall be submitted to the Agency no later than January 31 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the January 31 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Small "stationary sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(c) Large "stationary sources." At a minimum, "stationary sources" satisfying the criteria of 40 CFR 51, Subpart A will be submitted to EPA by the Agency for inclusion in the national emission database. Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon request, the "stationary sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected "stationary source" makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_x are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_x and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(d) Greenhouse gases. The Agency may require that "stationary sources" submit an inventory of greenhouse gas emissions. Affected "stationary sources" shall be notified of the inventory requirement and submittal deadline in writing.

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

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

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

(a) Fossil fuel-fired steam generators:

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

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

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

(d) Wood residue fired steam generators:

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

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4)(e) do not apply to wood residue fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4)(d) shall be subject to approval by the Agency.

(e) Owners and operators of those "stationary sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on the date cited in SWCAA 400-025), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (SWCAA 400-105(4)) does not apply to any "stationary source" pollutant emission that is:

(i) Required to be continuously monitored due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63 or 75.

(ii) Not subject to an applicable emission standard.

(5) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70A.15 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

(7) **Requirements for Continuous Emission Monitoring Systems.** The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or Agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:

(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 (as in effect on the date cited in SWCAA 400-025), and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(b) Data Availability. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments, continuous monitoring systems shall be in operation whenever the associated generating equipment is in operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(c) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the associated generating equipment is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(d) Data Recording. Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval, permit, or regulation. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(e) Data Retention. The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) Data Reporting. The owner or operator shall submit a report to SWCAA within thirty days after the end of each month in which data were recorded or as otherwise directed by the terms of the applicable air discharge permit, PSD permit, or regulation. The report required by this section may be combined with an excess emission report required by SWCAA 400-107. The report shall include the following information:

(i) The number of hours that the monitored "emission unit" operated during the month and the number of valid hours of monitoring data that the monitoring system recovered during the month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of section (c) above and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the associated generating equipment was operated each day;

(iv) The results of all cylinder gas audits (CGA) and relative accuracy test audits (RATA) conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

AMENDATORY SECTION (Amending WSR 17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

(1) **Emission testing requirements.**

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or "emission unit" within the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions. Required testing may be periodic and ongoing. Periodic emission testing conducted more than three months prior to an established due date does not fulfill the affected testing requirement unless approved in advance by the Agency.

(b) **Test methods.** Any required emission testing ((~~shall~~)) must be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

(c) **Accommodations for sampling.** The operator of a "source" ((~~shall~~)) must provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an "emission unit". The Agency ((~~shall be allowed to~~)) may obtain a sample from any "emission unit". The operator of the "source" ((~~shall~~)) must be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) **Notification/test plan submission.** The owner or operator of a "source" ((~~shall~~)) must submit a test plan to the Agency in writing at least 10 business days prior to any required emissions test or as otherwise approved by the Agency. Agency personnel ((~~shall~~)) must be informed at least 3 business days prior to testing so that they have an opportunity to be present during testing.

(e) **Test duration.** A minimum of 3 test runs, at least 1 hour in length, ((~~shall~~)) must be performed at maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The results of the individual test runs ((~~shall~~)) must be averaged together for the purpose of demonstrating compliance with applicable emission limits.

(f) **Test records.** A complete record of production related parameters including startups, shutdowns, and adjustments ((~~shall~~)) must be kept during emissions testing to correlate operations with emissions and ((~~shall~~)) must be recorded in the final test report.

(g) **Test reports.** Results of all required emission testing ((~~shall~~)) must be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable air discharge permit. ((~~Test reports shall be submitted in both printed and electronic formats.~~)) Measured concentrations for combustion and incineration "emission units" ((~~shall~~)) must be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The Agency may reject test reports that do not contain the information listed below, and require resubmittal of a complete report. Test reports ((~~shall~~)) must include the following information:

(i) A description of the "emission unit" including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or test locations;

(ii) Time and date of the test and identification and qualifications of the personnel involved;

(iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit, or as specified in the applicable air discharge permit. Where applicable, results ((~~shall~~)) must be reported both as measured and as corrected to the appropriate oxygen correction;

(iv) A summary of control system or equipment operating conditions;

(v) A summary of production related parameters;

(vi) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation;

(vii) A description of the analytical procedures used including all laboratory data; quality assurance/quality control procedures and documentation;

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

(xi) Discussion of any abnormalities associated with the results; and

(xii) A statement signed by the senior management official of the testing firm certifying the validity of the emission test report.

(2) **Emission monitoring requirements for combustion sources.**

(a) **Requirement to monitor.** The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) **Monitoring method.** Emission monitoring may be performed with a portable analyzer or EPA reference methods. Alternative methodologies may be used if approved by both EPA and SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration ((~~shall~~)) must be determined before sampling commences and after sampling has concluded. These "calibration error" measurements ((~~shall~~)) must be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure ((~~shall~~)) must include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling ((~~shall~~)) are not ((~~be~~)) valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations ((~~shall~~)) must be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

(c) **Accommodations for sampling.** The owner or operator of a "source" ((~~shall~~)) must provide the necessary platform and sampling ports for Agency personnel or others to perform monitoring of an "emission unit".

(d) **Data collection.** Emission data ((~~shall~~)) must be collected for at least five minutes following a "ramp-up" phase. The "ramp-up" phase ends when analyzer readings have stabilized (less than five percent per minute change in emission concentration value). Emission concentrations ((~~shall~~)) must be recorded every 30 seconds during data collection. All emission data collected following the ramp-up phase(s) ((~~shall~~)) must be reported to the Agency.

(e) **Monitoring records.** A complete record of production related parameters ((~~shall~~)) must be kept during emission monitoring to correlate operations with emissions and ((~~shall~~)) must be recorded in the final monitoring report. Typical production parameters include, but are not limited to, startups, shutdowns, unit load, fuel flow, operating temperature, etc.

(f) **Monitoring reports.** Results of all required emission monitoring ((~~shall~~)) must be submitted to the Agency within 15 calendar days of completion or as specified in the applicable regulatory order or air discharge permit. Results ((~~shall~~)) must be submitted on forms provided by the Agency or in an alternative format approved by the Agency. The report ((~~shall~~)) must include the following information:

(i) A description of the "emission unit" including manufacturer, model number and facility designation;

(ii) Time and date of the emission monitoring;

(iii) Identification of the personnel involved;

(iv) A summary of results, reported in units consistent with the applicable emission standard or limit;

(v) A summary of control system or equipment operating conditions, including firing rate at time of monitoring;

(vi) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation;

(vii) Calibration error check documentation, and

(viii) Copy of calibration gas certificates.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information ((~~shall~~)) must be identified as set forth in SWCAA 400-270.

(2) **Applicability.**

(a) An air discharge permit application ((~~shall~~)) must be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may commence construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

(i) New construction or installation;

(ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);

(iii) Review of existing or installed equipment operating without prior approval;

(iv) Modification, alteration or replacement of existing process or control equipment;

(v)Relocation of existing equipment;

(vi) Review of existing equipment with an expired or lapsed approval or registration;

(vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT, BART, LAER); or

(viii) Administrative amendment of an existing air discharge permit.

(b) An air discharge permit application must be submitted for the following equipment:

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

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

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

((~~(b)~~)) (c) Submittal of an air discharge permit application ((~~shall~~)) does not automatically impose review requirements pursuant to SWCAA 400-110.

((~~(c)~~)) (d) Stationary sources subject to the PSD program (WAC 173-400-700 through -750) ((~~shall~~)) must submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application ((~~shall~~)) must also be submitted to SWCAA.

((~~(d)~~)) (e) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, ((~~shall~~)) must include all information necessary to meet the requirements of SWCAA 400-800 through 400-860.

((~~(e)~~)) (f) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected "emission units" and quantify potential emissions, and the payment of a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

((~~(f)~~)) (g) Permit Extension. A permittee may request extension of a permit's eighteen-month construction period. To request an extension, the permittee must submit a ((~~complete application~~)) written request to the Agency at least 60 calendar days prior to permit expiration. The ((~~application~~)) request shall clearly identify the justification for extension and include relevant supporting information. The permittee shall also pay a fee as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The

Agency will process the ((~~application~~)) request as described in SWCAA 400-110(9).

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification ((~~shall~~)) must, at a minimum, contain the following information:

-Name and location of "stationary source";

-Description of primary processes at the "stationary source";

-Description of "emission units" at the "stationary source"; and

-Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" ((~~shall~~)) must not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application ((~~shall~~)) must be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" may choose to comply with the requirements of SWCAA 400-072 in lieu of this section if it meets applicable category criteria contained in SWCAA 400-072 and SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or "emission unit" may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas emissions as part of a permitting action.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all "emission units" at the affected site or facility are less than all of the following exemption emission thresholds.

Pollutant	Exemption Threshold
NO_X, CO, SO_2	1.0 tpy (individual pollutant)
PM_{10}	0.75 tpy
$PM_{2.5}$	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)

Toxic air pollutants	The lesser of 1.0 tpy (combined) or the individual SQER per WAC 173-460 (effective 8/21/98)

(e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

(A) Relocation of a portable source that has an active air discharge permit from SWCAA allowing portable operation,

(B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Natural gas or propane fired, rooftop air heating units operated for the purpose of comfort heating,

(E) Natural gas or propane fired heating units with individual rated heat inputs of less than 200,000 Btu per hour operated solely for the purpose of freeze protection,

((~~(D)~~)) (F) Asphalt roofing and application equipment (not manufacturing or storage equipment),

((~~(E)~~)) (G) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

((~~(F)~~)) (H) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

((~~(G)~~)) (I) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,

((~~(H)~~)) (J) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

((~~(I)~~)) (K) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

((~~(J)~~)) (L) Retail paint sales establishments (not including manufacturing),

((~~(K)~~)) (M) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

((~~(L)~~)) (N) Sewing equipment,

((~~(M)~~)) (O) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

((~~(N)~~)) (P) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(d). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

((~~(O)~~)) (Q) Residential wood heaters (e.g., fireplaces and woodstoves),

((~~(P)~~)) (R) Office equipment, operations and supplies,

((~~(Q)~~)) (S) Steam cleaning equipment used exclusively for that purpose,

((~~(R)~~)) (T) Refrigeration systems that are not in air pollution control service,

((~~(S)~~)) (U) Housekeeping activities and equipment,

((~~(T)~~)) (V) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

((~~(U)~~)) (W) Natural and forced air vents and stacks for bathroom/toilet facilities,

((~~(V)~~)) (X) Personal care activities,

((~~(W)~~)) (Y) Lawn and landscaping activities,

((~~(X)~~)) (Z) Flares used to indicate danger to the public,

((~~(Y)~~)) (AA) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425,

((~~(Z)~~)) (AB) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question,

((~~(AA)~~)) (AC) Emergency service internal combustion engines individually rated at less than 50 horsepower, and

((~~(AB)~~)) (AD) Emergency service internal combustion engines located at a facility where the ((~~aggregate~~)) combined power rating of all internal combustion engines is less than 200 horsepower. In determining the ((~~aggregate~~)) combined power rating of a facility, individual units with a rating of less than 50 horsepower ((~~shall not be~~)) are not considered,

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application ((~~or issue a permit~~)), the applicant ((~~shall~~)) must submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(5) **Final determination.**

(a) Each complete air discharge permit application ((~~shall~~)) must result in the issuance of a final determination to approve or deny consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) ((~~shall~~)) must be complied with for each air discharge permit application. Air discharge permit applications for actions that are subject to SEPA review ((~~shall~~)) must include a completed environmental checklist as provided in WAC 197-11 or a copy of another agency's SEPA determination for the same action. A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed re-

quest to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency ((~~shall~~)) will provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency ((~~shall~~)) will provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" ((~~shall~~)) must not begin prior to that time.

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

Reviser's note: 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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

(1) **Applicability.**

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 ((~~shall~~)) will be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification ((~~shall be~~)) is limited to the "emission unit(s)" proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" ((~~shall~~)) must comply with the requirements of SWCAA 400-111, 400-112, 400-113, 400-800 through -860, and/or WAC 173-400-700 through -750.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-109(3). The owner or operator of an exempt facility ((~~shall~~)) must maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section;

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046; and

(iii) Portable stationary sources subject to the provisions of SWCAA 400-036.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC (as in effect 8/21/98), not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable

Small Quantity Emission Rate specified in WAC 173-460-150. The material change may not cause an existing emission limit to be exceeded.

(2) **Application completeness determination.** Within 30 calendar days of receipt of an air discharge permit application and applicable fees, 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 as provided under RCW 70A.15.2210.

(a) Each application ((~~shall~~)) must provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification. The application ((~~shall~~)) must identify the location, design, construction, and operation the new source as necessary to enable the Agency to determine that the new source will meet applicable requirements.

(b) An application for a new major stationary source or major modification ((~~shall~~)) must provide all information required for review pursuant to WAC 173-400-700 through -750 or SWCAA 400-800 through -860, as applicable.

(c) An application for a source subject to the Special Protection requirements for federal Class I areas in WAC 173-400-117(2) ((~~shall~~)) must include all information required for review of the project under WAC 173-400-117(3).

(d) A completed SEPA checklist or relevant SEPA determination for the proposed action ((~~shall~~)) must be submitted with each application, as provided in WAC 197-11. If a proposed action is exempt from SEPA, sufficient documentation ((~~shall~~)) must be provided to confirm its exempt status.

(e) If an applicant fails to respond to Agency information requests within 60 calendar days, the Agency may presume the air discharge permit application is being withdrawn. The Agency will issue written notice of application withdrawal. No fees will be refunded if an application is withdrawn.

(3) **Requirements.**

(a) All review requirements ((~~shall~~)) must be met, and an air discharge permit ((~~shall~~)) must be issued by the Agency, prior to construction of any "new source," new "emission unit", or modification.

(b) All review requirements ((~~shall~~)) must be met, and an air discharge permit ((~~shall~~)) must be issued by the Agency, prior to construction of any modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS and applicable ambient air quality standards. Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. If the ambient impact of a proposed project could potentially exceed an applicable ambient air increment, the Agency may require that the applicant demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" that meet the applicability criteria of WAC 173-400-720 ((~~shall~~)) must demonstrate that all applicable requirements of WAC 173-400-700 through -750 have been met.

(e) Air discharge permit applications for "major stationary sources" or "major modifications" that are located within a designated nonattainment area and meet the applicability criteria of SWCAA 400-820 ((~~shall~~)) must demonstrate that all applicable requirements of SWCAA 400-800 through -860 have been met.

(f) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager and EPA.

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete application, the Agency, Control Officer, or designated representative ((~~shall~~)) must either issue a final decision approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. The Agency will promptly provide copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70A.15.2260 and the application required by this section. An application designated for integrated review ((~~shall~~)) must be processed in accordance with Chapter 173-401 WAC procedures and deadlines and must comply with SWCAA 400-171. A PSD permit application subject to WAC 173-400-700 through -750 ((~~shall~~)) must comply with the public process requirements of those sections.

(b) An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(c) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

(d) Permits issued pursuant to this section may supersede previously issued permits provided existing terms and conditions not affected by the permitting action or requested to be changed by the applicant are carried forward unchanged.

(e) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency ((~~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.

(f) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, the Agency ((~~shall~~)) must submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

(g) If SWCAA is the lead SEPA agency for the proposed action and mitigation measures are required as a result of the SEPA review, ap-

plicable mitigation measures ((~~shall~~)) must be included in the final determination.

(5) **Appeals.** An air discharge permit, any conditions contained in an air discharge permit, the denial of an air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC.

(6) **Portable sources.** The owner(s) or operator(s) of portable sources, as defined in SWCAA 400-030, ((~~shall be allowed to~~)) may operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected "emission units" are registered with the Agency pursuant to SWCAA 400-100.

(b) The affected "emission units" have an air discharge permit as a portable "stationary source" issued by SWCAA.

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location prior to starting the operation. This rule section supersedes corresponding notification requirements contained in existing air discharge permits.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction as provided in SWCAA 400-036.

A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years ((~~shall~~)) may be removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any portable source removed from active registration ((~~shall~~)) must submit a new permit application pursuant to SWCAA 400-109 and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air discharge permit issued pursuant to this section ((~~shall~~)) will be considered a violation of this section. Noncompliance with any term of a regulatory order or air discharge permit used to satisfy the criteria of SWCAA 400-036 ((~~shall~~)) will be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" ((~~shall~~)) will become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

(9) **Extension.** If construction has not commenced within eighteen months of permit issuance, the Agency may extend the start of construction period upon a satisfactory demonstration that an extension

is justified. To obtain an extension, the permittee must submit a ((~~complete application~~)) written request as described in SWCAA 400-109 (2)((~~(f)~~))(g). The Agency will review all submitted information, and then approve or deny the extension in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency ((~~shall~~)) will provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology. The extension of a project that is either a major stationary source or a major modification, as those terms are defined in SWCAA 400-810, ((~~shall~~)) must also require determination of LAER as it exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(10) **Revocation.** The Agency may revoke a source's Order of Approval or air discharge permit if applicable registration fees are delinquent for 2 or more consecutive years.

(11) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause an applicable emissions standard set by regulation or rule to be exceeded;

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

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

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112, 400-113, and 400-830(3) as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

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

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, ((~~shall~~)) must be considered when determining which new source review approvals are required.

(e) A request to change approval/permit conditions ((~~shall~~)) must be filed as an air discharge permit application in accordance with SWCAA 400-109. The application ((~~shall~~)) must meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109(4) ((~~shall~~)) will apply to these requests.

(12) **Reopening for cause.**

(a) The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

(i) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.

(ii) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

(iii) The permit does not meet minimum federal standards.

(b) The Agency ((~~shall~~)) must inform the permittee of its intent to reopen for cause and the reason for the action. Agency actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

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 (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). The term "Administrator" in 40 CFR Part 60 ((~~shall~~)) means the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the Energy Facility Site Evaluation Council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

(a) 40 CFR 60.5 Determination of construction or modification

(b) 40 CFR 60.6 Review of plans

(c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)

(d) Subpart Ba Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20a et seq.)

(e) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)

(f) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)

(g) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)

(h) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)

(i) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)

(j) Subpart Cf Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30f et seq.)

(k) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(l) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4).

(m) Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004 (ref. 40 CFR 60.2980 et seq.)

((~~(n) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)~~))

((~~(o)~~)) (n) Subpart MMMM Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)

((~~(p)~~)) (o) Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) - as it applies to non-Title V sources

((~~(q)~~)) (p) Subpart UUUUa Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) - as it applies to non-Title V sources

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 (Amending WSR 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks ((~~shall~~)) must be configured to discharge vertically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks ((~~shall~~)) must discharge at a point higher than surrounding buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis provided the owner/operator demonstrates that the alternate configuration will not cause or contribute to a violation of increment or a NAAQS.

The following source categories are not subject to the provisions of this section:

(a) Combustion units used for space heating provided the units are fired on natural gas, propane, or ultra low sulfur diesel (≤15 ppmw S content) and have an individual heat input rating of 2.0 MMBtu/hr or less.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under an applicable Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(3) **Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$ where:

H_g ="good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

H = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

L = lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Dispersion techniques include increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion ((~~shall~~)) applies only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(4) **Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study ((~~shall~~)) must be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study ((~~shall~~)) must ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the

feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration ((~~shall~~)) must be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

AMENDATORY SECTION (Amending WSR 01-05-057 filed 2/15/01, effective 3/18/01)

SWCAA 400-290 Severability

The provisions of this regulation are severable. If any provision((~~, meaning phrase, clause, subsection or section, or its application to any person or circumstance~~)) of SWCAA 400 is held to be invalid by any court of competent jurisdiction, ((~~the application of such provision to other circumstances and~~)) the remainder of the regulation ((~~to other persons or circumstances~~)) will not be affected.

AMENDATORY SECTION (Amending WSR 21-17-054 filed 8/10/21, effective 9/10/21)

APPENDIX C
FEDERAL STANDARDS ADOPTED BY REFERENCE

The following lists of affected subparts are provided for informational purposes only.

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (NSPS) 40 CFR 60

Subpart A General Provisions (re105f. 40 CFR 60.1 et seq.)

Subpart D Fossil Fuel-fired Steam Generators (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40b et seq.)

Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)

Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)

Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification

of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/Medical/Infectious Waste Incinerators (ref. 40 CFR 60.50c et seq.)

Subpart F Portland Cement Plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)

Subpart Ga Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011 (ref. 40 CFR 60.70a et seq.)

Subpart H Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum Refineries (ref. 40 CFR 60.100 et seq.)

Subpart Ja Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)

Subpart K Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978 (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Secondary Brass and Bronze Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N Primary Emissions From Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973 (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983 (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal Preparation and Processing Plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983 (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)

Subpart BBa Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (ref. 40 CFR 60.280a et seq.)

Subpart CC Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain Elevators (ref. 40 CFR 60.300 et seq.)

Subpart EE Surface Coating of Metal Furniture (ref. 40 CFR 60.310 et seq.)

Subpart GG Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)

Subpart HH Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)

Subpart KK Lead-Acid Battery Manufacturing Plants (ref. 40 CFR 60.370 et seq.)

Subpart LL Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)

Subpart MM Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)

Subpart NN Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)

Subpart PP Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)

Subpart QQ Graphic Arts Industry: Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)

Subpart RR Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)

Subpart SS Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)

Subpart TT Metal Coil Surface Coating (ref. 40 CFR 60.460 et seq.)

Subpart UU Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)

Subpart VV Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)

Subpart VVa Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)

Subpart WW Beverage Can Surface Coating Industry (ref. 40 CFR 60.490 et seq.)

Subpart XX Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)

Subpart AAA New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)

Subpart BBB Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)

Subpart DDD VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)

Subpart FFF Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)

Subpart GGG Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)

Subpart GGGa Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)

Subpart HHH Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)

Subpart III VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)

Subpart JJJ Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)

Subpart KKK Equipment Leaks of VOC From Onshore Natural Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.630 et seq.)

Subpart LLL SO_2 Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or Before August 23, 2011 (ref. 40 CFR 60.640 et seq.)

Subpart NNN VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)

Subpart OOO Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)

Subpart PPP Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)

Subpart QQQ VOC Emissions From Petroleum Refinery Wastewater Systems (ref. 40 CFR 60.690 et seq.)

Subpart RRR VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Reactor Processes (ref. 40 CFR 60.700 et seq.)

Subpart SSS Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)

Subpart TTT Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)

Subpart UUU Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)

Subpart WWW Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification on or After May 30, 1991, but Before July 18, 2014 (ref. 40 CFR 60.750 et seq.)

(*See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991*)

Subpart XXX Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014 (ref. 40 CFR 60.760 et seq.)

Subpart AAAA Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999, or for Which Modification or Reconstruction is Commenced After June 6, 2001 (ref. 40 CFR 60.1000 et seq.)

(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)

Subpart CCCC Commercial and Industrial Solid Waste Incineration Units (ref. 40 CFR 60.2000 et seq.)

(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)

Subpart EEEE Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006 (ref. 40 CFR 60.2880 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)((~~*Title V Sources Only*~~))

Subpart KKKK Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Subpart LLLL New Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)

Subpart OOOO Crude Oil and Natural Gas Production, Transmission and Distribution for Which Construction, Modification or Reconstruction Commenced After August 23, 2011, and on or Before September 18, 2015 (ref. 40 CFR 60.5360 et seq.)

Subpart OOOOa Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After September 18, 2015 (ref. 40 CFR 60.5360a et seq.)

Subpart QQQQ New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)

Subpart TTTT Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.) *Title V Sources Only*

Subpart UUUUa Greenhouse Gas Emissions From Existing Electric Utility Generating Units (ref. 40 CFR 60.5700a et seq.) *Title V Sources Only*

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)

Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)

Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)

Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)

Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61

Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)

Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)

Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)

Subpart E Mercury (ref. 40 CFR 61.50 et seq.)

Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)

Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)

Subpart L Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)

Subpart M Asbestos (ref. 40 CFR 61.140 et seq.)

Subpart N Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)

Subpart O Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)

Subpart P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)

Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

Subpart Y Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)

Subpart BB Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)

Subpart FF Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES
(MACT) 40 CFR 63

Subpart A General Provisions (ref. 40 CFR 63.1 et seq.)

Subpart F Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)

Subpart G Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)

Subpart H Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)

Subpart I Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)

Subpart J Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)

Subpart L Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)

Subpart M Perchloroethylene Dry Cleaning Facilities (ref. 40 CFR 63.320 et seq.)

Title V Sources Only

Subpart N Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (ref. 40 CFR 63.340 et seq.)

Subpart O Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)

Subpart Q Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)

Subpart R Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (ref. 40 CFR 63.420 et seq.)

Subpart S Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)

Subpart T Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)

Subpart U Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)

Subpart Y Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)

Subpart GG Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)

Subpart HH Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

((~~Subpart LL Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)~~))

Subpart MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart NN Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)

Subpart OO Tanks – Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)

Subpart TT Equipment Leaks – Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU Equipment Leaks – Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW Storage Vessels (Tanks) – Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY Generic Maximum Achievable Control Technology Standards (ref. 40 CFR 63.1100 et seq.)

Subpart CCC Steel Pickling – HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)

Subpart GGG Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPPP Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYY Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart ZZZZ Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)

Title V Sources Only

Subpart AAAAA Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBBB Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCCC Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart DDDDD Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)

Subpart EEEEE Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFFF Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGGG Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHHH Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

Subpart IIIII Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)

Subpart JJJJJ Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)

Subpart KKKKK Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)

Subpart LLLLL Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)

Subpart MMMMM Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)

Subpart NNNNN Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PPPPP Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Subpart UUUUU Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)

Subpart WWWWW Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)

Subpart YYYYY Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart ZZZZZ Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)

Subpart BBBBBB Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)

Subpart CCCCCC Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)

Subpart DDDDDD Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)

Subpart EEEEEE Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFFF Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)

Subpart GGGGGG Primary Nonferrous Metals Area Sources – Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)

Subpart HHHHHH Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.)

Title V Sources Only

Subpart JJJJJJ Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.)

Title V Sources Only

Subpart LLLLLL Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)

Subpart MMMMMM Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)

Subpart NNNNNN Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)

Subpart OOOOOO Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)

Subpart PPPPPP Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart VVVVVV Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)

Subpart WWWWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)

Subpart XXXXXX Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.)

Title V Sources Only

Subpart YYYYYY Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)

Subpart ZZZZZZ Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)

Subpart AAAAAAA Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)

Subpart BBBBBBB Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)

Subpart CCCCCCC Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)

Subpart DDDDDDD Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)

Subpart EEEEEEE Gold Mine Ore Processing and Production Area Source Category (ref. 40 CFR 63.11640 et seq.)

Subpart HHHHHHH Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 63.11860 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

Reviser's note: 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.

WSR 22-21-033
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
[Filed October 7, 2022, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-112.

Title of Rule and Other Identifying Information: Chapter 196-25 WAC, Business practices.

Hearing Location(s): On November 30, 2022, at 2:00 p.m., at Board of Registration for Professional Engineers and Land Surveyors Office, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501; or join WebEx meeting https://brpels.my.webex.com/brpels.my/j.php?MTID=mc89432e03703036c24229ca426dc62ee; or join by phone +1-650-479-3208 United States toll [free]. The board of registration for professional engineers and land surveyors will be holding this hearing in person at the board's offices in Olympia.

The public may also participate in the hearing virtually by accessing the hearing link on the board's rule-making page https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity or calling the phone number provided.

Date of Intended Adoption: December 8, 2022.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-835-5388, email Shanan.Gillespie@brpels.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes are necessary because of updates to chapter 18.43 RCW in 2019. Changes also include language to clarify requirements for licensure. Rule amendments will impact all businesses that are required to apply for or renew a certificate of authorization per RCW 18.43.130.

Reasons Supporting Proposal: The amendments and new sections help clarify what businesses need to obtain a certificate of authorization from the board and which businesses are exempt, as well as clarify the designated licensee requirements.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.130.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of registration for professional engineers and land surveyors is not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5)(a).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The following rules are exempt per RCW 34.05.310 (4)(c) because the language incorporates by reference, without material change, Washington state statutes, rules of other Washington state agencies: WAC 196-25-003 Business licenses, 196-25-005 Corporation and LLC certificates of authorization, 196-25-046 Professional service corporation, 196-25-047 Professional limited liability company, and 196-25-060 Offer to practice by all businesses.

The following rules are exempt per RCW 34.05.310 (4)(d) [because] the amendments clarify language without changing its effect: WAC 196-25-002 Definitions, 196-25-070 Providing direct supervision, and 196-25-080 Practice by businesses, organizations or public agencies.

The following rules are exempt per RCW 34.05.310 (4)(g)(ii) process requirements for applying to an agency for a license or permit: WAC 196-25-010 Applications for certificates of authorization, 196-25-040 Corporation and limited liability company designees, and 196-25-045 Changes and renewals.

Scope of exemption for rule proposal:

Is fully exempt.

October 7, 2022
Ken Fuller
Director

OTS-3591.1

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-002 Definitions. Board. The Washington state board of registration for professional engineers and land surveyors.

Business. A corporation, professional service corporation (PSC), limited liability company (LLC), professional limited liability company (PLLC), partnership or sole proprietorship that is practicing or offering to practice, engineering or land surveying or both in this state.

Certificate of authorization. A certificate issued by the board, pursuant to chapter 18.43 RCW, to a corporation or limited liability company (LLC), authorizing it to practice engineering or land survey-

ing or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.)

Designee, designated engineer, designated land surveyor. A currently registered professional engineer designated by a corporation or LLC to be in responsible charge of engineering activities for the corporation or LLC in Washington, or, a currently registered professional land surveyor designated by a corporation or LLC to be in responsible charge of land surveying activities for the business in Washington.

Employee. A person in the service of another under any contract of hire, expressed or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule, and location of employment.

Professional engineer. A person registered by the board under chapter 18.43 RCW to practice engineering in this state.

Professional land surveyor. A person registered by the board under chapter 18.43 RCW to practice land surveying in this state.

((**Resident engineer or resident land surveyor.** A currently registered professional engineer or land surveyor who maintains a business headquarters or branch office as his/her normal place of employment, and is in responsible charge of the engineering and/or land surveying services.

Business. A corporation, professional service corporation (PS), joint stock association (JSA) or limited liability company (LLC) or professional limited liability company (PLLC) that is practicing or offering to practice, engineering or land surveying or both in this state.

Designee, designated engineer, designated land surveyor. A currently registered professional engineer designated by the business to be in responsible charge of engineering activities for the business in Washington, OR, a currently registered professional land surveyor designated by the business to be in responsible charge of land surveying activities for the business in Washington.

Employee. A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule and location of employment.

Branch office. One or more alternate locations in Washington of a business, not recognized as the business' main office or headquarters, which is established to offer and provide engineering and/or land surveying services from that location.

Project office. A temporary remote location of an engineering and/or land surveying business that is a convenient workplace for providing specific engineering and/or land surveying services only in support of a project.

Certificate of authorization. A certificate issued by the board, pursuant to chapter 18.43 RCW, to a business authorizing it to practice engineering or land surveying or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.))

Responsible charge. To be in responsible charge means to have the authority to make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington on behalf of a corporation or LLC. RCW 18.43.130 (8)(b) and (10)(b).

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-002, filed 8/9/05, effective 9/9/05. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-002, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-003 Business licenses. Businesses must obtain a business license from the department of revenue prior to offering services to the public pursuant to chapter 82.32 RCW.

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AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-005 ((~~Businesses that must be authorized by the board.~~)) Corporation and LLC certificates of authorization. ((~~Except for professional service (PS) corporations and professional service limited liability companies (PLLC's), all~~)) Corporations((~~, joint stock associations~~)) and limited liability companies ((~~(LLC's)~~)) that offer engineering or land surveying services must obtain from the board a certificate of authorization to practice engineering or land surveying or both in the state of Washington.

((~~A general partnership must employ at least one person currently registered pursuant to chapter 18.43 RCW for each profession for which services are offered.~~)) Corporations and LLCs must be registered with the secretary of state and the department of revenue and have a unified business identifier (UBI) number prior to applying for a certificate of authorization.

Professional service corporations and professional limited liability companies, sole proprietorships, and partnerships are exempt from applying for certificates of authorization.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-005, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-005, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-010 Applications for certificates of authorization. All applications by corporations and LLCs for certificates of authorization must be completed on forms provided by the board and submitted to the offices of the board. A complete application requires the following: Payment of the appropriate fee as listed in chapter 196-26A WAC; affidavit of designated professional engineer and/or land surveyor; and, ((~~certified~~)) a copy of resolution naming the designated engineer, or land surveyor, or both.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-010, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-040 ((~~Provisions pertaining to only corporations, joint stock associations~~)) Corporation and limited liability ((~~companies~~)) company designees. (1) Each corporation or LLC must designate a registered engineer or land surveyor respectively to be in responsible charge.

(2) If the business offers both engineering and land surveying services, there must be a designee for each profession. If a person is licensed in both engineering and land surveying, that person may be designated for both professions.

((~~(2)~~)) (3) An affidavit must be signed by the designee(s) stating that ((~~he or she~~)) they know((~~s~~)) they have been designated by the ((~~business~~)) corporation or LLC as being in responsible charge for the engineering and/or land surveying activities in the state of Washington.

((~~(3)~~)) (4) The designated engineer and/or designated land surveyor must be an employee of the ((~~business~~)) corporation or LLC.

((~~(4)~~)) (5) No person may be the designated engineer or designated land surveyor at more than one ((~~business~~)) corporation or LLC at any one time.

((~~(5)~~)) (6) When there is a change in the designee(s), the business must notify the board in writing no later than ((~~thirty~~)) 30 days after the effective date of the change and submit a new affidavit.

((~~(6) If the business changes its name, the business must submit a copy of its amended certificate of authority or amended certificate of incorporation (for corporations) or a copy of the certificate of amendment (for LLC's), as filed with the secretary of state within thirty days of the name change.~~

~~(7) At the time of renewal, the corporation or limited liability company must submit a copy of the document issued to their company by the state of Washington master license service which states that the corporation or limited liability company has been "renewed by the authority of the secretary of state" and shows a current expiration date.~~

~~(8) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any business that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.~~))

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-040, filed 8/9/05, effective 9/9/05; WSR 99-15-057, § 196-25-040, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-040, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-045 Changes and renewals. (1) If the business changes its name with the secretary of state, the business must notify the board within 30 days of the name change.

(2) At the time of renewal, the corporation or limited liability company must have a current license with the secretary of state and the department of revenue.

(3) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any corporation or LLC that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035 18.43.105, 18.43.110, and 18.43.120.

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NEW SECTION

WAC 196-25-046 Professional service corporation. (1) Professional service corporations lawfully organized under chapter 18.100 RCW are not required to obtain certificates of authorization under this chapter.

(2) All engineering services provided by a professional service corporation, must be provided by a duly licensed professional engineer pursuant to RCW 18.100.060.

(3) A registered engineer may own stock in and render individual professional services through only one professional service corporation at any time pursuant to RCW 18.100.050(2).

(4) The standards of professional conduct for engineers under chapter 18.43 RCW and this Title 196 WAC apply to any professional services performed by a PSC or its individual member licensees pursuant to RCW 18.100.070.

(5) A PSC that performs engineering services must comply with chapters 18.43 and 18.100 RCW.

[]

NEW SECTION

WAC 196-25-047 Professional limited liability company. (1) A group of licensed professional engineers or land surveyors legally authorized to render the same professional services within this state may form and become members of a professional limited liability company for the purposes of rendering professional engineering or land surveying pursuant to RCW 25.15.046.

(2) A professional limited liability company and its members are subject to all the provisions of chapter 18.100 RCW.

(3) No engineering or land surveying services may be performed by a PLLC unless those services are performed by a licensed engineer or land surveyor, respectively.

(4) Formation of a professional limited liability company under RCW 25.15.046 does not restrict the application of the Uniform Disciplinary Act under chapter 18.235 RCW.

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AMENDATORY SECTION (Amending WSR 99-15-054, filed 7/15/99, effective 8/15/99)

WAC 196-25-060 Offer to practice by all businesses. The offer to practice or provide engineering or land surveying services to the public must be made by or under the direct supervision of a licensee qualified to offer said services under the provisions of chapter 18.43 RCW.

The practice of engineering or land surveying by a partnership offering engineering or land surveying services must employ at least one licensed engineer or land surveyor that can provide professional services and/or direct supervision over said services.

[Statutory Authority: RCW 18.43.035. WSR 99-15-054, § 196-25-060, filed 7/15/99, effective 8/15/99.]

AMENDATORY SECTION (Amending WSR 10-05-017, filed 2/4/10, effective 3/7/10)

WAC 196-25-070 Providing direct supervision. Direct supervision ((~~means the actions by which~~)) by a licensee ((~~maintains~~)) is described as follows:

(1) Maintaining control over those decisions that are the basis for the findings, conclusions, analyses, rationale, details, and judgments required for the preparation of engineering or land surveying plans, specifications, plats, surveys, land descriptions as defined by WAC 332-130-020, reports, as-built documents prepared by the licensee, and related activities. ((~~**Direct supervision**~~))

(2) Requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.

(3) These actions may include, but are not limited to: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology.

(4) Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision.

(5) Mentoring is not direct supervision. ((~~Drawing or other~~)) Reviewing documents ((~~review~~)) as defined by WAC 196-23-020, after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

[Statutory Authority: RCW 18.43.035. WSR 10-05-017, § 196-25-070, filed 2/4/10, effective 3/7/10; WSR 06-22-033, § 196-25-070, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-030.]

AMENDATORY SECTION (Amending WSR 06-22-033, filed 10/25/06, effective 11/25/06)

WAC 196-25-080 Practice by businesses, organizations or public agencies. When a business, organization or public agency offers or performs engineering or land surveying services as defined in RCW 18.43.020, the business, organization or public agency shall perform its duties and responsibilities in the same manner as an individual, in accordance with RCW 18.43.130 (8)(f) and (10)(f), chapters 18.43, 18.100, and 18.235 RCW, and other applicable statutes and rules.

[Statutory Authority: RCW 18.43.035. WSR 06-22-033, § 196-25-080, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-050.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-25-050 Branch offices.

WSR 22-21-045
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Order 21-11—Filed October 11, 2022, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-031 on August 23, 2021.

Title of Rule and Other Identifying Information: New WAC 220-500-045 Domestic goats and sheep on Washington department of fish and wildlife managed lands.

Hearing Location(s): On December 1, 2022, at 3 p.m., virtual meeting December 1, 2022, WDFW Director Decision Hearing [contact agency for URL]. Written public comment submission deadline is November 30, 2022, by 11:59 p.m. All public comments will be considered; however, to have your comment incorporated into the director decision briefing presentation, your comment needs to be submitted no later than 8 a.m. on November 23, 2022.

Date of Intended Adoption: On or after December 12, 2022.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email SheepAndGoats102@PublicInput.com, fax 360-902-2162, https://publicinput.com/SheepAndGoats102, phone 1-855-925-2801, project code 2652, by November 30, 2022.

Assistance for Persons with Disabilities: Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 711 or 1-800-833-6388, email Title6@dfw.wa.gov, http://wdfw.wa.gov/accessibility/requests-accommodation, by November 30, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed new section to chapter 220-500 WAC, WAC 220-500-045 Domestic goats and sheep on Washington department of fish and wildlife managed lands, if adopted, is to reduce risk of disease transmission to bighorn sheep via contact with domestic goats and sheep on wildlife areas managed by the department.

Reasons Supporting Proposal: The Western Association of Fish and Wildlife Agencies Wild Sheep Working Group (WAFWA) published management recommendations for domestic sheep and goats in bighorn habitat in 2012. WAFWA defines "effective separation" as spatial or temporal separation between wild sheep and domestic sheep or goats to minimize the potential for association and the probability of transmission of diseases between species. WAFWA advocates that effective separation should be a primary management goal of state, provincial, territorial, and federal agencies responsible for the conservation of wild sheep, based on evidence that domestic sheep or goats can transfer pathogens to wild sheep. Scientific literature and experimental evidence support the goal that domestic sheep or goats should not concurrently occupy areas where conservation of wild sheep is a clearly stated management goal.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.210.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.210.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: If adopted,

the proposed amendments would prohibit access of visitors with domestic sheep or goats to 12 wildlife areas managed by the department. These restrictions would be implemented with a combination of education, signage, and enforcement following the rule's enactment. Anticipated costs associated with implementation outreach and engagement efforts, signage design and installation costs, and marginal enforcement costs to support enforcement of this rule among the suite of regulations of visitor access and use of Washington department of fish and wildlife (WDFW)-managed lands.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 11, 2022
Annie Szvetecz
Agency Rules Coordinator

OTS-4153.1

NEW SECTION

WAC 220-500-045 Domestic goats and sheep on Washington department of fish and wildlife managed lands. (1) It is unlawful for any person to bring or lead domestic goats or sheep onto the following department wildlife area units or other WDFW-managed lands posted as closed to domestic goats or sheep, unless otherwise permitted by the director to do so:

(a) Asotin Creek Wildlife Area: Asotin Creek, Weatherly, and George Creek Units;

(b) Chelan Wildlife Area: Beebe Springs, Chelan Butte, Swakane, and Entiat Units;

(c) Chief Joseph Wildlife Area: Chief Joseph, 4-O Ranch, Grouse Flats, and Shumaker Units;

(d) Colockum Wildlife Area: Colockum Unit;

(e) Columbia Basin Wildlife Area: Lower Crab Creek and Quincy Lakes Units;

(f) L.T. Murray Wildlife Area: Quilomene, L.T. Murray, and Whiskey Dick Units;

(g) Oak Creek Wildlife Area: Cowiche, Oak Creek, and Rock Creek Units;

(h) Scotch Creek Wildlife Area: Chesaw, Ellemehan, Scotch Creek, Charles and Mary Eder, Similkameen-Chopaka, and Tunk Valley Units;

(i) Sinlahekin Wildlife Area: Sinlahekin, Driscoll Island, and Carter Mountain Units;

(j) Wells Wildlife Area: Indian Dan Canyon Unit;

(k) Wenas Wildlife Area: Wenas Unit;

(l) W.T. Wooten Wildlife Area: W.T. Wooten Unit.

(2) Goats or sheep that have tested positive for *Mycoplasma ovipneumoniae* or that are displaying signs of pneumonia or other illness will not be allowed on any WDFW-managed lands. Goats or sheep displaying signs of pneumonia or other illness while on department lands must be removed by the animal(s) owner or owner's agent within 48 hours.

(3) If a goat or sheep becomes lost, the owner or owner's agent must make every effort to locate and recover it. If the goat or sheep cannot be recovered, the animal's owner or owner's agent shall contact the department by telephone as soon as possible.

[]

WSR 22-21-049
PROPOSED RULES
POLLUTION LIABILITY
INSURANCE AGENCY
[Filed October 11, 2022, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-035.

Title of Rule and Other Identifying Information: Chapter 374-70 WAC, Heating oil pollution liability insurance program, also referred to as the heating oil insurance program.

Hearing Location(s): On November 30, 2022, at 12:00 to 1:30 p.m.; on December 6, 2022, at 4:00 to 6:00 p.m.; or on December 15, 2022, at 12:00 to 1:30 p.m., virtual meetings. Meeting link can be found on the pollution liability insurance agency's (PLIA) website www.plia.wa.gov.

Date of Intended Adoption: January 1, 2023.

Submit Written Comments to: Phi Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, by December 15, 2022.

Assistance for Persons with Disabilities: Xyzlinda Marshall, phone 360-407-0515, TTY 711 or 800-833-6388, email rules@plia.wa.gov, by December 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: PLIA provides an effective and efficient government funding model to support owners and operators in meeting financial responsibility and environmental clean-up requirements for underground storage tanks.

The heating oil insurance program was authorized by the legislature under RCW 70A.330.040 to assist owners and operators with the cost of cleaning up releases from heating oil tanks. In 2020, the legislature directed PLIA to transition the heating oil insurance program to the agency's revolving loan and grant program as described in chapter 70A.345 RCW.

The proposed changes to the rule language include the legislative directive that PLIA end new registrations for the heating oil insurance program on July 2, 2020, and it provides procedural updates to program administration.

Reasons Supporting Proposal: This chapter provides registered heating oil tank owners and operators funds to clean up contamination in order to meet the substantive requirements of the Model Toxics Control Act, chapters 70A.305 RCW and 173-340 WAC. The amended rule reflects statutory direction regarding program registration and updates to program administration.

Statutory Authority for Adoption: RCW 70A.330.040(1).

Statute Being Implemented: Chapter 70A.330 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Phi Ly, 500 Columbia Street N.W., Olympia, WA 98501, 360-407-0517.

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

A cost-benefit analysis is not required under RCW 34.05.328.A cost-benefit analysis is not required for an existing program.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal

statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:
Is fully exempt.

October 11, 2022
Phi Ly
Legislative and Policy Manager

OTS-4148.1

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-010 Purpose and authority. (1) The purpose of this chapter is to address a solution to the threat posed to human health and the environment by accidental releases of heating oil from heating oil tanks. It is in the best interest of all citizens for heating oil tanks to be operated safely, and for accidental releases or spills to be dealt with expeditiously in order to ensure that the environment, particularly groundwater, ((~~is~~)) and human health are protected. It is also in the best interest of individual heating oil tank owners to protect them from the unexpected liability and potential financial hardship associated with an accidental release from a heating oil tank.

(2) The pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-010, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-010, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-010, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a heating oil tank that has been left unused and that is no longer connected to an oil-fired

furnace used for space heating of human living or working space on the premises where the tank is located.

(2) "Accidental release" means a sudden or nonsudden release of heating oil from a heating oil tank or its system that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(3) "Agency" means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW and is referred to as PLIA throughout this chapter. For purposes of chapter 70A.330 RCW, agency or PLIA shall also mean staff or employees of the pollution liability insurance agency.

(4) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(5) "Claim" means a demand made by a named insured, or the insured's representative, for payment of the benefits provided under the heating oil pollution liability insurance program.

(6)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Removal, replacement or repair of heating oil tanks or other receptacles, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles; or

(iii) Costs directly associated with tank removal.

(7) "Decommissioned heating oil tank" means a heating oil tank that is no longer connected to an oil-fired furnace used for space heating of human living or working space on the premises where the tank is located and that has been taken out of operation in accordance with the International Fire Code and any pertinent local government requirements.

(8) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(9) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(10) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not in-

clude a decommissioned or abandoned heating oil tank, or a tank used solely for industrial process heating purposes or generation of electrical energy.

(11) "Heating oil tank service provider" is an independent contractor responsible for corrective action including sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(12) "Insurer" means the commercial insurance company providing pollution liability insurance to registered owners of heating oil tanks under the heating oil pollution liability insurance program. PLIA is the reinsurer of the commercial insurance company and acts as the designated representative of the insurer for the heating oil pollution liability insurance program.

(13) "MTCA" means the Model Toxics Control Act (chapter 70A.305 RCW).

(14) "Named insured" means the ((~~individual insureds who are~~)) owner of the heating oil tank ((~~owners~~)) registered for coverage under the heating oil pollution liability insurance program.

(15) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in an accidental release from a heating oil tank.

(16) "Online community" means the cloud-based application and data system used by the agency, the agency's customers, and service providers to submit documentation, report, process, and look up project information.

(17) "Owner" means the person, or his or her authorized representative, legally responsible for a heating oil tank, its contents, and the premises upon which the heating oil tank is located.

((~~(17)~~)) (18) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

((~~(18)~~)) (19) "Per occurrence, per site, per year" means one accidental release per site, per year.

((~~(19)~~)) (20) "Pollution liability insurance agency" (PLIA) means the Washington state pollution liability insurance agency established pursuant to chapter 70A.325 RCW. For purposes of chapter 70A.330 RCW, pollution liability insurance agency shall also mean staff or employees of the pollution liability insurance agency.

((~~(20)~~)) (21) "Pollution liability insurance agency trust account" means the pollution liability insurance agency trust account established under chapter 70A.325 RCW and established in the custody of the state treasurer. Expenditures from the account are used for the purposes of chapter 70A.325 RCW including the payment of costs of administering the pollution liability insurance program, and payment of reinsurance claims.

((~~(21)~~)) (22) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

((~~(22)~~)) (23) "Property damage restoration" means the restoration of property to a similar condition to that of the property prior to the accidental release. Restoration includes the replacement of sod, plants or concrete driveway or walkway, or the replacement of flooring in the case of a basement tank.

((~~(23)~~)) (24) "Release" means a spill, leak, emission, escape, or leaching into the environment.

((~~(24)~~)) (25) "Service provider" means an independent contractor or business who provides corrective action to address heating oil tank releases. A service provider is not a representative, staff, or an employee of the pollution liability insurance agency.

(26) "Third-party claimant" means a person alleged to have suffered property damage requiring corrective action or bodily injury as a direct result of a leak or spill from the heating oil tank of a named insured.

((~~(25)~~)) (27) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage requiring corrective action or bodily injury that results from a leak or spill from a heating oil tank.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-020, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-020, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-020, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-020, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-030 Responsibility. (1) The director of the pollution liability insurance agency is directed by chapter 70A.330 RCW to establish the heating oil pollution liability insurance program to assist owners and operators of heating oil tanks. The agency implements and administers the pollution liability insurance program established by chapter 70A.325 RCW and the heating oil pollution liability insurance program established by chapter 70A.330 RCW.

(2) The location of the principal office and the mailing address of the agency is:

Pollution Liability Insurance Agency
((~~State of~~)) Washington State
P.O. Box 40930
Olympia, WA 98504-0930

(3) The principal administrative and appointing officer of the agency is the director. The director may designate other employees of the agency to act in his or her behalf in the director's absence or with respect to those matters in which so doing would enhance the efficiency of the agency's operations.

(4) In administering the heating oil pollution liability insurance program, PLIA acts as the designated representative of the insurer providing pollution liability insurance to ((~~registered~~)) owners of registered heating oil tanks.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-030, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-030, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-030, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-030, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-040 Insurance program. The director, as the heating oil pollution liability insurance program administrator, is responsible for obtaining pollution liability insurance coverage on behalf of the named insureds: All ((~~registered~~)) owners of registered heating oil tanks as defined in this chapter. The pollution liability insurance policy will provide ((~~sixty thousand dollars~~)) $60,000 coverage, including reinsurance, per occurrence, per site, per year and shall be in excess of other valid insurance and warranties. The policy will be reinsured through the pollution liability insurance agency trust account.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-040, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-040, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-050 Eligibility. ((~~Owners and operators of~~)) In accordance with RCW 70A.330.040(1), only heating oil tanks in ((~~the state of~~)) Washington state with registrations in place before July 2, 2020, and the owner associated with that heating oil tank are eligible for coverage under the heating oil pollution liability insurance program.

(1) Participation in the heating oil pollution liability insurance program is optional for heating oil tank owners((~~. If a heating oil tank owner wishes to participate in the heating oil pollution liability insurance program, the heating oil tank owner must register the heating oil tank by submitting to PLIA a completed registration form to be provided by PLIA~~)) with heating oil tank registrations in place before July 2, 2020.

(2) Abandoned or decommissioned heating oil tanks are not eligible for coverage under the heating oil pollution liability insurance program, except as described in WAC 374-70-080(4) and 374-70-090(4).

(3) Registration of the heating oil tank in the heating oil pollution liability insurance program must be in the name of the current owner of the property where the registered heating oil tank is located. In the event of a property ownership transfer, the new property owner must submit ((~~a new~~)) an updated registration form within ((~~one hundred eighty~~)) 180 calendar days of the property ownership transfer in order to ((~~avoid a lapse in coverage from the prior registered owner~~)) maintain the registration. The date of the property ownership transfer will be considered the first day of the ((~~one hundred eighty~~)) 180 calendar days. If the new owner does not register within ((~~one hundred eighty~~)) 180 calendar days, the registration will ((~~be considered a new registration and coverage will start on the date the registration was received~~)) end.

(a) Property ownership transfers include, but are not limited to, sales, gifting, and inheritances.

(b) A person inheriting property with a heating oil tank registration has 12 months to notify PLIA about the property ownership

transfer. After 12 months the registration ends if there are no notifications to PLIA and no named property owner.

(4) If a claim for coverage under WAC 374-70-080 or 374-70-090 is submitted within ((~~one hundred eighty~~)) 180 calendar days after the property is transferred, and before the new owner has submitted ((~~a new~~)) an updated registration, the new owner will be deemed to be the named insured for the purposes of this chapter.

((~~(4)~~)) (5) PLIA reserves the right to perform an independent investigation to verify the eligibility of a heating oil tank. All investigative costs will be the responsibility of PLIA.

((~~(5) Accidental releases occurring prior to heating oil tank registration are not eligible for coverage under the heating oil pollution liability insurance program.~~

~~(6) Owners and operators of heating oil tanks, or sites containing heating oil tanks where an accidental release has been identified or where the owner or operator knows of an accidental release prior to heating oil tank registration are eligible for coverage under the heating oil pollution liability insurance program; however, if the owner or operator files a claim with PLIA, the owner or operator has the burden of proving, to the satisfaction of the director, that the claim is not related to an accidental release occurring prior to the heating oil tank registration.~~))

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-050, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 96-01-101, § 374-70-050, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-060 Coverage. (1) The effective date of coverage under the heating oil pollution liability insurance program is January 1, 1996. ((~~Thereafter, individual heating oil tank coverage shall become effective upon receipt, by PLIA, of the completed registration form.~~)) Corrective action for an accidental release occurring prior to ((~~the~~)) this effective date ((~~of coverage~~)) will not be covered under the program.

(2) The heating oil pollution liability insurance program provides coverage for corrective action costs up to ((~~sixty thousand dollars~~)) $60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties.

(3) **Corrective action costs covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurs after the registration of a heating oil tank;

(b) Actions necessary to determine the extent and severity of an accidental release;

(c) Costs, not to exceed ((~~sixty thousand dollars~~)) $60,000 per occurrence, per site, per year;

(d) Costs in excess of other valid insurance or warranties;

(e) Third-party property damage restoration, including landscaping, limited to ((~~one thousand five hundred dollars~~)) $1,500 for each third-party claimant per occurrence, per site, per year;

(f) Excavation, treatment and/or removal and proper disposal of any soil or water contaminated by the accidental release and proper disposal of nonrepairable heating oil tank or tanks;

(g) Required soil and water sampling and testing to determine if corrective action standards have been met; and

(h) Reimbursement of new tank replacement costs in accordance with RCW 70A.330.100.

(4) **Corrective action costs not covered under the heating oil pollution liability insurance program include:**

(a) Corrective action if the accidental release occurred prior to the registration of a heating oil tank;

(b) Costs covered by other valid insurance or warranties;

(c) Costs in excess of ((~~sixty thousand dollars~~)) $60,000 per occurrence, per site, per year, exclusive of other valid insurance or warranties;

(d) Cleanup of contamination from other sources;

(e) Removal, repair or replacement of the heating oil tank, lines, or furnace, except reimbursement of new tank replacement costs in accordance with RCW 70A.330.100;

(f) Emergency heat restoration procedures;

(g) Cleanup of a site beyond the MTCA cleanup levels;

(h) Corrective action associated with an abandoned or decommissioned heating oil tank or site; ((~~and~~))

(i) Corrective action to address releases or damage to the heating oil tank or its system or surrounding property caused by a service provider or contractor;

(j) Corrective action performed by a service provider whose principal is also the named property owner of the registered heating oil tank;

(k) Costs associated with landscaping and surface restoration in excess of previous conditions for the property of the named insured;

(l) Costs associated with property restoration that are not deemed essential to personal safety or are in excess of previous conditions at the site;

(m) Third-party property damage restoration, including landscaping, in excess of ((~~one thousand five hundred dollars~~)) $1,500 for each third-party claimant per occurrence, per site, per year; and

((~~(j)~~)) (n) Defense costs, including the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(i) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(ii) A third party for bodily injury or property damage caused by an accidental release.

(5) If a claim exceeds ((~~sixty thousand dollars~~)) $60,000 in total damages, coverage within the ((~~sixty thousand dollars~~)) $60,000 policy limit shall be on a pro rata basis between the insured heating oil tank owner and third-party claimant(s).

(6) A claim will be accepted for coverage only after ((~~an investigation has confirmed~~)) the named insured provides PLIA with documentation which confirms the existence of an accidental release which is eligible for coverage under these rules. PLIA reserves the right to perform an investigation including, but not limited to, soil sample testing, to confirm a release.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-060, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-060, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-060, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-060, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 08-20-013, filed 9/18/08, effective 1/1/09)

WAC 374-70-070 Parties involved with an accidental release and corrective action. Among the potential parties involved when an accidental release is suspected from a heating oil tank or line are the heating oil tank owner or operator, adjacent property owners, heating oil supplier, PLIA, third-party administrator, department of ecology, and heating oil tank service providers.

(1) Heating oil tank owner or operator. All liabilities caused by an accidental release originating from a heating oil tank are the sole responsibility of the heating oil tank owner or operator. The pollution liability insurance agency and/or the state of Washington accepts no liability, nor portion of the liability, from the heating oil tank owner or operator.

(a) The heating oil tank operator may submit forms to PLIA on behalf of the owner, however, no corrective action may be performed without the specific written consent of the heating oil tank owner.

(b) The heating oil tank owner or operator is responsible for notifying the heating oil supplier in the case of a suspected accidental release and investigating the source and extent of the suspected accidental release.

(c) The heating oil tank owner is responsible ((~~to provide~~)) for providing documentation to PLIA that pollution liability coverage will not be provided by the ((~~owner's homeowners'~~)) homeowner's insurer.

(d) If corrective action is implemented, the heating oil tank owner is responsible for selecting a service provider approved by the insurer and approving the completed corrective action.

(2) Adjacent property owners. If an accidental release migrates offsite, or is suspected to have migrated, the adjacent property owner may be involved in the corrective action. In this situation, the heating oil tank owner or operator shall notify PLIA of the occurrence and provide the adjacent property owner's name, address and telephone number.

(3) Heating oil supplier. Some heating oil suppliers provide customer services which may be a resource to evaluate a suspected accidental release to the environment. If after investigating a heating system malfunction, a heating oil supplier determines that an accidental release may have occurred, the heating oil supplier should inform the owner or operator of the accidental release.

(4) PLIA acts as the designated representative of the insurer for purposes of the heating oil pollution liability insurance program. PLIA provides informal advice and technical assistance to heating oil tank owners and operators((~~, registers heating oil tanks for insurance coverage~~)) (chapter 374-80 WAC), provides listings of service providers approved by the insurer, manages claims for the insurer and provides certification that a claim is closed.

(5) Third-party administrator. PLIA may appoint a third-party administrator to assist in monitoring, investigation and corrective action.

(6) Department of ecology. The department of ecology administers statewide laws and rules detailing MTCA cleanup standards for both soil and groundwater. To be eligible for coverage under the heating oil pollution liability insurance program, corrective action must satisfy MTCA and pertinent local government requirements.

(7) Heating oil tank service provider. A heating oil tank service provider is an independent contractor who contracts with ((~~an~~)) the heating oil tank owner ((~~or operator~~)) to perform corrective action, ((~~including submitting reports to PLIA on behalf of the owner or operator~~)) and meets the requirements detailed in WAC 374-70-100.

[Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-070, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-070, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-070, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-080 Claims. Coverage under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. To receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The claim must be for corrective action resulting from an accidental release from a heating oil tank which has been registered with PLIA prior to the accidental release;

(2) The claim must satisfy all requirements and restrictions established by chapter 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The heating oil tank owner or operator must provide notice to PLIA that a potential claim exists as soon as practicable after discovery that an accidental release may have occurred;

(4) ((~~The~~)) A claim must be ((~~submitted to~~)) made with PLIA by the owner of the registered tank as soon as practicable, but not more than ((~~thirty~~)) 180 calendar days after the date a registered heating oil tank becomes abandoned or decommissioned((~~. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA~~));

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim, and will ((~~provide~~)) require

the heating oil tank owner ((~~or operator with a list of insurer~~)) to select a service provider from PLIA's listing of approved heating oil tank service providers;

(6) The heating oil tank operator may submit reports and forms on behalf of the heating oil tank owner; however, no corrective action will be initiated or performed without the specific written consent of the heating oil tank owner;

(7) The heating oil tank owner is responsible for investigation to determine the source ((~~and extent~~)) of a suspected accidental release. The heating oil tank owner is also responsible for providing documentation to PLIA that coverage will not be provided by the owner's homeowners' insurer;

(8) If the claim is determined by PLIA to be valid, PLIA will ((~~so~~)) notify the heating oil tank owner or operator. The corrective action shall be performed by a heating oil tank service provider approved by the insurer;

(9) The heating oil tank service provider will notify PLIA of selection by the heating oil tank owner ((~~or operator~~)). PLIA will ((~~then forward to~~)) inform the heating oil tank service provider of the following forms to be used and which are accessed through the online community:

(a) Scope of work proposal. This form will provide the heating oil tank owner or operator and PLIA ((~~a~~)) the site characterization and proposal of the extent and elements of corrective action to include analytical samples, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) ((~~Claim~~)) Closeout report. This ((~~form~~)) will include a project closeout ((~~report~~)) form, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

(10) The heating oil tank service provider will submit for approval to the heating oil tank owner or operator and then to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(11) Upon receipt of approval by the heating oil tank owner ((~~or operator~~)) and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action(s);

(12) All work performed by the heating oil tank service provider on behalf of the heating oil tank owner or operator and PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the heating oil tank owner or operator and then PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the heating oil tank owner or operator ((~~and~~)) and/or PLIA((~~,~~)) or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibili-

ty of the heating oil tank owner and/or heating oil tank service provider;

(13) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form ((~~provided by PLIA~~)) in the online community;

(14) Upon completion of all corrective action, the heating oil tank owner ((~~or operator~~)) must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(15) Upon completion of corrective action and approval by the heating oil tank owner ((~~or operator~~)), the heating oil tank service provider must submit to PLIA a complete claim report;

(16) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the claim has been closed;

(17) If a notice of potential claim has been filed and approved by PLIA but no work commenced within 12 months, then PLIA may close the claim for inactivity, and the registered owner must request reopening of the claim from PLIA;

(18) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the ((~~revenue available for the heating oil pollution liability insurance program~~)) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments. Payment will commence with sufficient revenue;

((~~(18)~~)) (19) PLIA will maintain all records associated with a claim for a period of ((~~ten~~)) 10 years; and

((~~(19)~~)) (20) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-080, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-080, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-080, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-080, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-70-090 Third-party claims. Coverage for a third-party claim under the heating oil pollution liability insurance program shall be in excess of other valid insurance and warranties. Payment of a third-party claim will be made only if the cleanup of contamination resulting from an accidental release is not covered by other valid insurance and warranties. Corrective action will be accomplished by the most cost-effective method available. For a third party to receive payment from the heating oil pollution liability insurance program for covered corrective action costs, the following actions are required:

(1) The third-party claim must be for corrective action resulting from ((~~a leak or spill~~)) an accidental release from a heating oil tank which has been registered with PLIA prior to the ((~~leak or spill~~)) accidental release;

(2) The claim must satisfy all requirements and restrictions established for third-party claims by chapter 70A.330 RCW and this chapter. Any failure to satisfy all requirements and restrictions may be a basis for denial of claim;

(3) The third-party claimant must provide notice to PLIA that a potential third-party claim may exist as soon as practicable after discovery that damage may have occurred from ((~~a leak or spill~~)) an accidental release from a named insured's heating oil tank;

(4) The claim must be submitted to PLIA ((~~not more than thirty calendar~~)) as soon as practicable but no later than 180 days after the date a registered heating oil tank is abandoned or decommissioned((~~. The heating oil tank owner or operator has the burden of proving, to the satisfaction of the director, that the tank has not been abandoned or decommissioned longer than thirty calendar days. The date that the tank is abandoned or decommissioned, whichever is earlier, will be considered the first day of the thirty calendar days. PLIA may accept claims after thirty calendar days if the abandoned or decommissioned tank was registered with PLIA and was replaced with a new heating oil tank that continues to be registered with PLIA~~));

(5) Upon receipt of notice of a potential claim, PLIA will commence completion of the notice of claim;

(6) If an accidental release from a named insured's heating oil tank has been confirmed as impacting the third-party claimant, PLIA, as designated representative of the insurer will initiate an investigation to determine the ((~~extent and~~)) source of the contamination. Investigation will be performed by PLIA or a designated representative approved by the insurer. PLIA may also assist the named insured heating oil tank owner in determining if the insured's homeowner's insurance provides coverage for third-party damage. The third-party claimant shall cooperate fully with the investigator and provide any information or access necessary to complete the investigation;

(7) If the claim is determined by PLIA to be valid, the third-party claimant will be notified by PLIA to select ((~~a~~)) an approved heating oil tank service provider((~~, approved by the insurer,~~)) to perform corrective action;

(8) The heating oil tank service provider will notify PLIA of selection by the third-party claimant. PLIA will then ((~~forward to~~)) inform the heating oil tank service provider of the following forms to be used and which are accessed through the online community:

(a) Scope of work proposal. This form will provide the third-party claimant and PLIA the site characterization and a proposal of the extent and elements of corrective action to include analytical samples, as well as a specific cost proposal;

(b) Change order. This form provides a proposal for change or deviation from the scope of work proposal;

(c) Project field report. This form provides a record of all corrective action and work elements, as well as a record of detailed costs. The project field report must include color photographs of the project at commencement, completion, and any significant steps in between, as well as appropriate project sketches and/or plans; and

(d) ((~~Claim~~)) Closeout report. This form will include a project closeout report, final cleanup report, and corrective action cost claim. The closeout report may serve as the closure of the claim under this program;

(9) The heating oil tank service provider will submit for approval to the third-party claimant and then to PLIA a scope of work proposal for corrective action at the heating oil tank site;

(10) Upon receipt of approval by the third-party claimant and PLIA of the scope of work proposal, the heating oil tank service provider may commence work to accomplish corrective action(s);

(11) All work performed by the heating oil tank service provider on behalf of the third-party claimant and ((~~the insurer~~)) PLIA must be within the terms of the contract and the approved scope of work proposal and shall not exceed costs included in the scope of work proposal. Any change(s) or deviation(s) from the approved scope of work proposal must be accomplished through a change order request which must be approved in advance by the third-party claimant and then PLIA. Any work performed by the heating oil tank service provider that has not been approved, prior to performance, by the third-party claimant and PLIA, or is beyond the terms of the scope of work proposal or change order(s), or is in excess of costs approved in the scope of work proposal or change order(s), will not be paid or reimbursed under the heating oil pollution liability insurance program. Such work or excess costs will be the responsibility of the third-party claimant and/or heating oil tank service provider;

(12) Corrective action activities and costs must be recorded by the heating oil tank service provider on the project field report form provided ((~~by PLIA~~)) in the online community;

(13) Upon completion of all corrective action, the third-party claimant must sign the project closeout report indicating approval of and satisfaction with all work performed by the heating oil tank service provider;

(14) Upon completion of corrective action and approval by the third-party claimant, the heating oil tank service provider must submit to PLIA a complete claim report((~~. After review and approval of the claim report by PLIA, the heating oil tank service provider will receive payment~~));

(15) Upon completion of corrective action that appears to satisfy the requirements of all applicable state and local statutes, the director will certify that the third-party claim has been closed;

(16) Approval of claims and payment of covered costs are contingent upon the availability of revenue. The director reserves the right to defer payment at any time that claim demands exceed the ((~~revenue available for the heating oil pollution liability insurance program. Payment will commence with sufficient revenue~~)) statutory limit provided in RCW 70A.330.040(1) and to develop a plan on resuming payments;

(17) PLIA will maintain all records associated with a claim for a period of ((~~ten~~)) 10 years; and

(18) In the case of an emergency, the director may authorize deviation from this procedure to the extent necessary to adequately respond to the emergency.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-70-090, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 08-20-013, § 374-70-090, filed 9/18/08, effective 1/1/09. Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-090, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-090, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-100 Service provider requirements and procedures. (1) All corrective action shall be performed by insurer approved heating oil tank service providers. A heating oil tank service provider is an independent contractor responsible for corrective action including excavation, sampling and testing, remedial actions, site restoration, and submittal of required reports to PLIA.

(2) Heating oil tank service providers are required to adhere to the terms and conditions detailed in the program's service provider agreement and to renew this agreement annually.

(a) PLIA provides a list of heating oil tank service providers on PLIA's website. This list is reviewed and updated regularly.

(b) Any service provider suspended or terminated due to violation of the service provider agreement is prohibited from participating in the heating oil insurance program.

(3) Once retained by the named insured or the third-party claimant, the heating oil tank service provider works with the insurer, PLIA, as the insurer's designated representative, the heating oil tank owner or operator and/or the third-party claimant to ((~~perform the following~~)):

(a) Perform the corrective action;

(b) Document the costs of the corrective action; and

(c) File the forms required through the online community to receive payment from the heating oil pollution liability insurance program.

((~~(3)~~)) (4) All heating oil tank service providers must follow claims procedures as outlined in WAC ((~~374-70-070~~)) 374-70-080.

((~~(4)~~)) (5) Whenever possible, all corrective action activities must meet the criteria established by MTCA and any pertinent local ordinances or requirements.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-100, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-100, filed 12/19/95, effective 1/19/96.]

AMENDATORY SECTION (Amending WSR 97-06-080, filed 3/3/97, effective 4/3/97)

WAC 374-70-120 Appeals. (1) A person may appeal any of the following decisions made under the heating oil pollution liability insurance program to the director:

(a) A denial of eligibility for coverage;

(b) Amount of payment allowed for corrective action;

(c) Amount of payment allowed for property damage;

(d) Amount of payment allowed for a third-party claim; and

(e) A determination that cleanup does not meet MTCA standards.

(2) A person has ((~~forty-five~~)) 45 days after the decision to file a written request for a hearing which will include a detailed statement on the reason for the appeal.

(3) If the written request for a hearing is received within ((~~forty-five~~)) 45 days, the director shall conduct an adjudicative hearing proceeding under chapter 34.05 RCW.

(4) If the written request for a hearing is not received within ((~~forty-five~~)) 45 days after the decision, no further consideration will be given to the appeal.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-06-080, § 374-70-120, filed 3/3/97, effective 4/3/97; WSR 96-01-101, § 374-70-120, filed 12/19/95, effective 1/19/96.]

WSR 22-21-054
PROPOSED RULES
BELLEVUE COLLEGE
[Filed October 12, 2022, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-052.

Title of Rule and Other Identifying Information: Chapter 132H-122 WAC, Withholding services for outstanding debts. Amending WAC 132H-122-010, 132H-122-020, and 132H-122-030.

Hearing Location(s): On November 21, 2022, at 3 to 4 p.m., online via Zoom https://bellevuecollege.zoom.us/j/87239560736; dial by your location +1 253 215 8782, meeting ID: 872 3956 0736.

Date of Intended Adoption: January 18, 2023.

Submit Written Comments to: Nadescha Bunje, Executive Assistant to the Vice President of Administrative Services, 3000 Landerholm Circle S.E., B-125D, Bellevue, WA 98007, email nadescha.bunje@bellevuecollege.edu, phone 425-564-5669.

Assistance for Persons with Disabilities: Contact Nadescha Bunje, executive assistant to the vice president of administrative services, phone 425-564-5669, TTY 425-564-6189, email nadescha.bunje@bellevuecollege.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College proposes updates to the current student financial debt rules under chapter 132H-122 WAC in order to be in compliance with current policies, remove outdated information, and clarify processes.

Reasons Supporting Proposal: These changes are proposed to comply with 2SHB 2513, to remove and/or update outdated information, and to further clarify rules.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(13).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nadescha Bunje, Bellevue College, B-125D, 3000 Landerholm Circle S.E., Bellevue, WA 98007, 425-564-5669.

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

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 12, 2022
Loreen McRea Keller
Associate Director, Policies and Special Projects

OTS-4127.1

Chapter 132H-122 WAC
((~~WITHHOLDING SERVICES FOR OUTSTANDING~~)) STUDENT FINANCIAL DEBTS

AMENDATORY SECTION (Amending WSR 92-19-054, filed 9/10/92, effective 10/11/92)

WAC 132H-122-010 Statement of policy. ((~~The college expects that students who receive services for which a financial obligation is incurred will exercise responsibility in meeting these obligations. Appropriate college staff are empowered to act in accordance with regularly adopted procedures to carry out the intent of this policy, and if necessary to initiate legal action to insure that collection matters are brought to a timely and satisfactory conclusion.~~

~~Admission to or registration with the college, conferring of degrees and issuance of academic transcripts may be withheld for failure to meet financial obligations to the college.~~)) (1) Bellevue College expects students who owe a debt for services, tuition and fees, housing, financial aid, fines, and other fees to pay the amount they owe, or set up a payment plan, and to contact the college for additional information, if needed.

(2) Students have the right to ask for details related to the debt, and to appeal a debt.

(3) The finance office is responsible for the implementation of this code.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-010, filed 9/10/92, effective 10/11/92.]

AMENDATORY SECTION (Amending WSR 02-14-008, filed 6/20/02, effective 7/21/02)

WAC 132H-122-020 ((~~Withholding services for outstanding debts.~~)) Student financial debt procedures. ((~~(1) Where there is an outstanding debt owed to the college and upon receipt of a written request inquiring as to the reason(s) for services or refund being withheld the college shall reply in writing to the person that the services and/or refund will not be provided. The college will include the amount of the outstanding debt, and further explain that until that debt is satisfied (or stayed by bankruptcy proceedings or discharged in bankruptcy), no such services and/or refund will be provided to the individual.~~

~~(a) The notice shall include a statement to inform the individual that he or she has a right to a hearing before a person designated by the president of the college if he or she believes that no debt is owed. The notice shall state that the request for the hearing must be made within twenty-one days from the date of notification.~~

~~(2) Upon receipt of a timely request for a hearing, the person designated by the president shall have the records and files of the college available for review and, at that time, shall hold a brief ad-~~

~~judicative proceeding concerning whether the individual owes or owed any outstanding debts to the institution. After the brief adjudicative proceeding, a decision shall be rendered by the president's designee indicating whether the college is correct in withholding services and/or applying off-set for the outstanding debt.~~

~~(a) If the outstanding debt is found to be owed by the individual involved, no further services shall be provided.~~

~~(b) Notice of the decision shall be sent to the individual within five days after the hearing.~~)) (1) The college may take the following actions for nonpayment of outstanding student debt:

(a) Place a hold, also called a negative service indicator, on a student's account if they owe a debt for housing, financial aid, tuition, or other college fees. A negative service indicator prevents enrollment for future quarters.

(b) Drop students for nonpayment of any debt at any time.

(c) Refer past due debts that exceed $100 to a collection agency. Prior to referral, students will receive notice via their Bellevue College email. The notice will include at a minimum the following information:

(i) The amount of the debt owed;

(ii) The nature of the debt;

(iii) Information on how to pay the debt;

(iv) Contact information for the finance office and/or staff member who can provide more information, and/or set up a payment plan;

(v) The deadline for payment of the debt; and

(vi) Any consequences that may result from nonpayment of the debt.

(2) Reporting requirements: The college follows the state reporting rules related to the use of negative service indicators, debt levels, and collection practices.

[Statutory Authority: RCW 28B.50.140. WSR 02-14-008, § 132H-122-020, filed 6/20/02, effective 7/21/02. Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-020, filed 9/10/92, effective 10/11/92.]

AMENDATORY SECTION (Amending WSR 92-19-054, filed 9/10/92, effective 10/11/92)

WAC 132H-122-030 ((~~Appeal of initial order upholding the withholding of services for outstanding debts.~~)) Debt dispute and appeal.

((~~(1) Any person aggrieved by an order issued under WAC 132H-122-020 may file an appeal with the president. The appeal must be in writing and must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal.~~

~~(2) The appeal must be filed within twenty-one days from the date on which the appellant received notification of the order issued under WAC 132H-122-020 upholding the withholding of services for outstanding debts. The president's determination shall be final.~~)) Students who believe that exigent circumstances exist, or an error occurred that may require reduction or removal of a debt, may submit an online appeal form, available on the enrollment services website, for review of the debt.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140. WSR 92-19-054, § 132H-122-030, filed 9/10/92, effective 10/11/92.]

WSR 22-21-061
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 12, 2022, 4:08 p.m.]

Continuance of WSR 22-08-111.

Preproposal statement of inquiry was filed as WSR 21-05-068.

Title of Rule and Other Identifying Information: New WAC 458-20-290 Workforce education investment surcharge——Select advanced computing businesses.

Hearing Location(s): The comment period for this rule making is being extended until October 21. No new hearings are planned.

Date of Intended Adoption: November 4, 2022.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed new rule is to reflect 2020 and 2022 legislation, ESSB 6492, SSB 5799, and ESB 5800, that imposed a surcharge on select advanced computing businesses as described in RCW 82.04.299.

Reasons Supporting Proposal: Businesses that engage in the activities subject to RCW 82.04.299 will find the new rule provides additional clarification on the application of the surcharge.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.299.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined in RCW 34.05.328.

Explanation of Exemptions: The exemption under RCW 34.05.310 (4)(f) applies to the proposed rule being amended because the rule sets the fees pursuant to RCW 19.02.075.

Scope of exemption for rule proposal:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose any liability for taxes, reporting requirements, recordkeeping requirements, or compliance requirements not otherwise imposed by statute.

October 12, 2022
Atif Aziz
Rules Coordinator

OTS-3215.3

NEW SECTION

WAC 458-20-290 Workforce education investment surcharge—Select advanced computing businesses. (1) **Introduction.** This rule provides information about the taxability of and surcharge for select advanced computing businesses as described in RCW 82.04.299.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions.** The following definitions apply throughout this rule:

(a) **"Advanced computing"** means designing or developing computer software or computer hardware, whether directly or contracting with another person, including:

(i) Modifications to computer software or computer hardware;

(ii) Cloud computing services; or

(iii) Operating as a marketplace facilitator as defined by RCW 82.08.0531, an online search engine, or an online social networking platform.

(b) **"Advanced computing business"** means a business that derives income, including income from affiliates, from engaging in advanced computing.

(c) **"Affiliate"** and **"affiliated"** means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person.

(d) **"Affiliated group"** means a group of two or more persons that are affiliated with each other.

(e) **"Cloud computing services"** means on-demand delivery of computing resources, such as networks, servers, storage, applications, and services, over the internet.

(f) **"Control"** means the possession, directly or indirectly, of more than 50 percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise.

(g) **"Select advanced computing business"** means a person who is a member of an affiliated group with at least one member of the affiliated group engaging in the business of advanced computing, and the affiliated group had worldwide gross revenue of more than $25,000,000,000 during the immediately preceding calendar year. A select advanced computing business does not include any of the following:

(i) A person primarily engaged within this state in the provision of commercial mobile service, as that term is defined in 47 U.S.C. Sec. 332(d)(1);

(ii) A person primarily engaged in this state in the operation and provision of access to transmission facilities and infrastructure that the person owns or leases for the transmission of voice, data, text, sound, and video using wired telecommunications networks; or

(iii) A person primarily engaged in business as a "financial institution" as defined in RCW 82.04.29004, as that section existed on January 1, 2020.

For purposes of (g) of this subsection, "primarily" is determined based on the taxable income of the business, as defined in (h) of this subsection.

(h) **"Taxable income of the business"** means the gross income of the business, as defined in RCW 82.04.080, to which the tax rate in RCW 82.04.290(2) is applied to determine the business's tax liability under that B&O tax classification. In other words, it is the business's taxable income under the service and other activities B&O tax classification.

(i) **"Worldwide gross revenue"** means the annual sum of all sources of revenues, worldwide, prior to any subtractions, for all members of an affiliated group.

(4) **Select advanced computing businesses - Taxability.**

(a) **Service and other activities B&O tax.** A select advanced computing business is subject to the service and other activities B&O tax rate of 1.5 percent as required in RCW 82.04.290 (2)(a)(ii).

(b) **Workforce education investment surcharge.** Beginning with business activities occurring on or after April 1, 2020, a workforce education investment surcharge (surcharge) is imposed on select advanced computing businesses. This surcharge is in addition to the B&O taxes described in (a) of this subsection, plus any additional taxes that are due and payable to the department.

(i) Surcharge amount. For each select advanced computing business, the surcharge is equal to the taxable income of the business, multiplied by a rate of 1.22 percent. The combined annual surcharge paid by all members of an affiliated group may not exceed $9,000,000.

(ii) Surcharge reporting. A select advanced computing business must report and pay the surcharge to the department on a quarterly basis, regardless of the tax reporting frequencies of the members in the select advanced computing business under RCW 82.32.045. The return and amount payable are due by the last day of the month immediately following the end of the quarter. This reporting requirement continues even if the combined annual surcharge paid by all members of an affiliated group reaches the $9,000,000 annual maximum amount described in (b)(i) of this subsection.

(iii) Surcharge payment agreement. Members of an affiliated group of select advanced computing businesses may enter into an agreement with the department for facilitating the payment of the surcharge for all members of the group.

(iv) Disclosure obligations. The department may require persons believed to be engaging in advanced computing, or affiliated with a person believed to be engaging in advanced computing, to disclose whether they are a member of an affiliated group, and if so, to identify all other members of the affiliated group subject to the surcharge.

(v) Penalties. If the department establishes by clear, cogent, and convincing evidence, that one or more members of an affiliated group, with the intent to evade the surcharge, failed to fully comply with the department's disclosure request, as described in (b)(iv) of this subsection, that person, or those persons collectively, will be assessed a penalty equal to 50 percent of the amount of the total surcharge payable by all members of that affiliated group for the calendar year during which the person or persons failed to comply. This penalty is in lieu of, and not in addition to, the evasion penalty under RCW 82.32.090(7). However, additional penalties may still apply including, but not limited to, the penalty for late payment of tax due on a return. See RCW 82.32.090(1).

(vi) Hospital exemption. The surcharge described in (b) of this subsection does not apply to:

(A) A hospital as defined in RCW 70.41.020, including any hospital that comes within the scope of chapter 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW; or

(B) A provider clinic offering primary care, multispecialty and surgical services, including behavioral health services, and any affiliate of the provider clinic if the affiliate is an organization that offers health care services or provides administrative support for a provider clinic, or is an independent practice association or accountable care organization. For purposes of (b)(vi)(B) of this subsection, "health care services" means services offered by health care providers relating to the prevention, cure, or treatment of illness, injury, or disease, and "primary care" means wellness and prevention services and the diagnosis and treatment of health conditions.

The exemptions under (b)(vi)(A) and (B) of this subsection do not apply to amounts received by any member of an affiliated group other than the businesses described in (b)(vi)(A) and (B) of this subsection.

(c) **Example 1.** Entity X, Entity Y, and Entity Z, an affiliated group, cumulatively had worldwide gross revenue of over $25,000,000,000 in 2021. Entity X and Entity Y are engaged in advanced computing, and Entity Z is engaged in real estate and leases commercial property to Entity X and Entity Y. All three entities are registered with the department and file and pay taxes on a monthly basis. For the first quarter of 2022, the entities reported the following amounts as taxable income of the business, respectively: Entity X: $800,000; Entity Y: $100,000; and Entity Z: $1,200,000.

The first step is to determine whether the taxable income subject to tax under the service and other activities B&O tax classification for each entity is subject to the 1.22 percent surcharge. Because Entities X, Y, and Z are all members of an affiliated group that had more than $25,000,000,000 of worldwide gross revenue during the preceding calendar year (2021 in this example), and Entity X and Entity Y are engaged in the business of advanced computing. Entities X, Y, and Z are each considered a "select advanced computing business." Therefore, the taxable income of the business for each entity is subject to the 1.22 percent surcharge as follows:

Entity X: $800,000 * 1.22% = $9,760

Entity Y: $100,000 * 1.22% = $1,220

Entity Z: $1,200,000 * 1.22% = $14,640

The total surcharge owed by this affiliated group of select advanced computing businesses for the first quarter of 2022 is $25,620. This amount is due no later than April 30, 2022, and must be reported and paid by each select advanced computing business to the department.

The next step is to determine the service and other activities B&O tax rate in RCW 82.04.290(2) to apply to the taxable income reported by each entity. Because the three entities are subject to the 1.22 percent surcharge, the taxable income reported under RCW 82.04.290(2) by each entity will be subject to the B&O tax rate of 1.5 percent as required in RCW 82.04.290 (2)(a)(ii):

Entity X: $800,000 (*) 1.5% (=) $12,000

Entity Y: $100,000 (*) 1.5% (=) $1,500

Entity Z: $1,200,000 (*) 1.5% (=) $18,000

Each entity will continue to file and pay any taxes due on a monthly basis.

(d) **Example 2.** Using the same facts as Example 1, beginning July 1, 2022, if Entity Z was operating a qualifying hospital or provider clinic, as described in (b)(vi)(A) and (B) of this subsection, it

would be exempt from the surcharge. However, Entity X and Entity Y would still be subject to the surcharge because neither is a business described in (b)(vi)(A) or (B) of this subsection.

[]

WSR 22-21-099
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-14—Filed October 17, 2022, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-099 on August 2, 2022.

Title of Rule and Other Identifying Information: The department is considering amendments to commercial Eulachon fishing rules, WAC 220-358-060 Smelt.

Hearing Location(s): On January 26-28, 2023, at 8:00 a.m., join the webinar https://us06web.zoom.us/j/88262111264, Webinar ID 882 6211 1264. Briefing/public hearing.

Date of Intended Adoption: No sooner than February 1, 2023.

Submit Written Comments to: Kelly Henderson, email EulachonFishing@PublicInput.com, website https://publicinput.com/EulachonFishing, voicemail comments 855-925-2801, project code 4237, by January 28, 2023.

Assistance for Persons with Disabilities: Contact civil rights compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, https://wdfw.wa.gov/accessibility/requests-accomodation, by January 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to rescind open fishing periods from the permanent Eulachon commercial fishing regulations to align these fishing regulations with current management strategies. There is no anticipated effect to commercial fishers since this fishery has not operated according to the open periods listed in permanent rules since 2010.

Reasons Supporting Proposal: Eulachon fisheries are managed in accordance with NOAA Fisheries due to their Endangered Species Act (ESA) listing status. Therefore, this rule would allow managers to set sustainable harvest limits by modifying fishery duration and intensity on an annual basis, pending run size forecasts. This rule change and management strategy will be in alignment with the revised Eulachon Management Plan in progress.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.130, 77.12.045, 77.12.047.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Gear, season, and permit specifications associated with the Eulachon commercial fishery will be decided annually based on Eulachon run sizes, availability of impacts to listed species under ESA and as part of the Columbia River compact process.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Laura Heironimus, Ridgefield, Washington, 360-719-0677; Enforcement: Captain Jeff Wickersham, Ridgefield, Washington or Montesano, Washington, 360-906-6714 or 360-249-4628 ext. 252.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not required under RCW 34.05.328 (5)(a)(iii).

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule conforms permanent rules with over a decade of fishery management decisions for the Eulachon commercial fishery, as managed under the Columbia River compact process.

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2022
Chris Fredley
for Annie Szvetecz
Rules Analyst

OTS-4143.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-358-060 Smelt. It is unlawful to fish for smelt in the lower Columbia River for commercial purposes or to possess smelt taken from those waters for commercial purposes, except as provided in this section:

Gear

(1) Otter trawl gear may be used to fish for smelt if:

(a) The head rope of the trawl does not exceed 25 feet in length.

(b) The foot rope or groundline of the trawl does not exceed 25 feet in length.

(c) The dimensions of the trawl's otter doors do not exceed 3 feet by 4 feet.

(d) The bag length of the trawl, as measured from the center of the head rope to the terminal end of the bunt, does not exceed 35 feet.

(e) The bridal rope from the rear of the otter doors to the foot and head ropes does not exceed 8 feet.

(f) Each breast rope does not exceed 5 feet.

(g) The mesh size used in the trawl does not exceed 2 inches stretch measure.

(h) Only one trawl net is fished from the boat at a time.

(2) Gillnet gear may be used to fish for smelt if it does not exceed 1,500 feet in length along the cork line and the mesh size of the net does not exceed 2 inches stretch measure.

(3) Hand dip net gear may be used to fish for smelt if it does not measure more than 36 inches across the bag frame.

(4) From December 1 through March 31 it is lawful for smelt fishers to have salmon or sturgeon gillnets aboard while fishing for smelt.

((**~~Fishing periods~~**

~~(5) Otter trawl gear may be used to fish for smelt in SMCRA 1A from 6 p.m. Monday to 6 p.m. Wednesday of each week from March 1 through March 31, and for boats not exceeding 32 feet in length, in SMCRA 1B, 1C, 1D and 1E 7 days per week from December 1 through March 31 of the following year.~~

~~(6) Gillnet gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(7) Hand dip net gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E and tributaries to these areas 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(8) The following areas of the lower Columbia River remain closed to smelt fishing during the open time periods specified in this section:~~

~~(a) Those waters within one mile of a dam or other obstruction.~~

~~(b) Those waters of the Cowlitz River upstream from a monument located at Peterson's Eddy, also known as Miller's Eddy.~~))

[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 § 220-358-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 00-17-117 (Order 00-146), § 220-33-040, filed 8/17/00, effective 9/17/00. Statutory Authority: RCW 75.08.080. WSR 88-18-066 (Order 88-86), § 220-33-040, filed 9/2/88.]

WSR 22-21-100
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-15—Filed October 17, 2022, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-100 on August 2, 2022.

Title of Rule and Other Identifying Information: Fishing guide logbook reporting rule revision, WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides.

Hearing Location(s): On December 8 - 10, 2022, at 8:00 a.m., at Clarkston, Washington; or join the webinar https://us06web.zoom.us/j/86718864047, Webinar ID 867 1886 4047. In person/hybrid.

Date of Intended Adoption: No sooner than January 1, 2023.

Submit Written Comments to: Kelly Henderson, email GuideLogbook@PublicInput.com, website https://publicinput.com/GuideLogbook, phone for voicemail comments 855-925-2801, project code 4215, by December 10, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by December 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This revision to the fishing guide logbook rule will improve enforceability and compliance of the rule. Specifically, this revision will require trip location and date information at the beginning of the trip, will clarify when reports entered through the web reporting tool need to be submitted, and remove reference to vessel, so it's clear that all guided fishing trips, whether on foot or on a vessel must be reported.

Reasons Supporting Proposal: This proposal will close enforcement loopholes allowing officers to make contacts at any point in the guided trip, not just at the end of the day at the boat launch. It also clarifies elements of the rule for the benefit of guides and will hopefully increase overall compliance with the rule.

Statutory Authority for Adoption: RCW 77.65.500.

Statute Being Implemented: RCW 77.65.500.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This rule making does not change the type of data being collected by guides, the reporting tools, or frequency of reporting. It clarifies elements of the rule and makes it easier to enforce.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Raquel Crosier, 111 Sherman Street, La Conner, WA 98257, 360-789-9652.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost benefit analysis under RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The revision will increase postage costs for those submitting paper logbook reports by requiring them to be submitted twice a month as opposed to once a month. All guides will have the option of submitting reports through the mobile application at no cost.

October 17, 2022
Chris Fredley
for Annie Szvetecz
Rules Analyst

OTS-4142.3

AMENDATORY SECTION (Amending WSR 19-17-010, filed 8/9/19, effective 1/1/20)

WAC 220-352-245 Reporting required of licensed food fish, game fish and combination fishing guides. (1) Licensed food fish, game fish and combination fishing guides shall maintain a daily logbook of guiding activity to include:

(a) Guide name and license No. for the guide leading the trip;

(b) Date that fishing took place. For multiday trips, each day is considered a separate trip;

(c) Specific name of river, stream, or lake fished;

(d) Site code of site fished as referenced within a list provided to each guide. If multiple sites are fished on the same day, each site is considered a separate trip;

(e) Client, "comped angler" and crew current fishing license number (wild ID No.) for each person on board if required to have a license or catch record card. A comped angler is an angler that fishes without charge;

(f) Indicate if person was a crew member or if angler was "comped";

(g) Species kept or released. For salmon and steelhead specify origin (hatchery, wild) and life stage (adult, jack).

(2) ((~~Logbooks are required to be completed for each trip before offloading any fish from the vessel or if no fish were kept, complete the logbook before leaving the site~~)) Every daily logbook entry must be started before fishing activity begins by entering guide name, license number, date, and waterbody the trip initiated from.

(3) Report of daily guiding activity shall be made using the department's paper logbook or ((~~online~~)) mobile reporting application. ((~~Logbook pages~~)) Trips reported using the paper logbook for activity that occurred between the first day of the calendar month and the 15th day of the calendar month must be ((~~provided~~)) postmarked and mailed to the department ((~~or postmarked within ten days following any calendar month in which the guiding activity took place~~)) by the 28th day of the same calendar month. Trips reported using the paper logbook for activity that occurred between the 16th day of the calendar month and the last day of the calendar month must be postmarked and mailed to the department by the 14th day of the calendar month immediately fol-

lowing. Reports logged using the mobile application must be finalized or submitted at the end of the guided trip before leaving the site.

(4) Each day of fishing ((~~that occurs on a designated WDFW licensed guide fish vessel~~)) will be required to be recorded in the logbook. This includes any personal use or nonguided fishing trips that occur. Only guide name, license number, and date are required for nonguided fishing trips.

(5) Information collected under this section may be exempt from public disclosure to the extent provided under RCW 42.56.430.

(6) Failure to report any guiding activity listed in subsections (1) through (4) of this section is an infraction, punishable under RCW 77.15.160.

(7) A fishing guide, or person under the control or direction of a fishing guide, that submits false information is guilty of a gross misdemeanor, punishable under RCW 77.15.270.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020 and 77.04.055. WSR 19-17-010 (Order 19-141), § 220-352-245, filed 8/9/19, effective 1/1/20.]

WSR 22-21-119
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 18, 2022, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-149.

Title of Rule and Other Identifying Information: Verification for presumptive coverage of frontline workers and health care workers. Chapter 296-14 WAC, Industrial insurance.

Hearing Location(s): On November 28, 2022, at 9:00 a.m., electronically. Join Zoom meeting at https://lni-wa-gov.zoom.us/j/9361655337, Meeting ID 936 165 5337, join by phone +1 253-215-8782 US (Tacoma). Find your local number https://lni-wa-gov.zoom.us/u/kdFrdfe0fg. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: January 31, 2023.

Submit Written Comments to: Jordan Ely, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email Jordan.Ely@Lni.wa.gov, fax 360-902-5029, by November 28, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Nathalie.Penberthy@Lni.wa.gov, by November 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on the legislation passed in 2021, which included language that the department must create rules to explain the verification required by frontline and health care workers documenting the contraction of the infectious or contagious disease and quarantine criteria for health care workers, this rule making proposes to create these new WAC:

WAC 296-14-340 Frontline workers—Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.181. This rule defines what is required to verify that an infectious or contagious disease that is the subject of a public health emergency has been contracted.

WAC 296-14-341 Health care workers—Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.090. This rule defines what is required to verify contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency.

Reasons Supporting Proposal: Legislation passed during the 2021 session (chapter 251, Laws of 2021, ESSB 5190, and chapter 252, Laws of 2021, ESSB 5115) resulted in the creation of RCW 51.32.181 and 51.32.390. This rule making is necessary to implement these bills which establish presumptive coverage for frontline workers subject to a public health emergency. This rule making proposes to create rules to clarify what is and is not verification of contraction of an infectious or contagious disease for frontline workers that is the subject of a public health emergency.

Statutory Authority for Adoption: RCW 51.04.020, 51.32.181, 51.32.390.

Statute Being Implemented: RCW 51.32.181, 51.32.390.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(c)(ii) because the rule making is proposing to adopt language that does not subject a person to a penalty or sanction that sets forth the agency's interpretation of statutory provisions it administers by establishing verification criteria.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule making is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(c)(ii) because the rule making is proposing to adopt language that does not subject a person to a penalty or sanction that sets forth the agency's interpretation of statutory provisions it administers by establishing verification criteria that a worker must have to receive a presumption under RCW 51.32.181 and 51.32.390.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Joel Sacks
Director

OTS-4020.2

NEW SECTION

WAC 296-14-340 Frontline workers—Verification for contraction of an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.181. (1) Verification that an infectious or contagious disease has been contracted requires:

(a) A diagnosis from a medical provider made by examination; or

(b) A positive test administered by a medical facility, testing facility, pharmacy, or the employer.

(2) The following cannot be used as verification that a worker has contracted an infectious or contagious disease:

(a) Symptoms only self-reported by the worker;

(b) A report from a medical provider that solely relies on a worker's self-reported positive test results; or

(c) Results from tests administered by the worker and not confirmed by the employer or medical provider.

[]

NEW SECTION

WAC 296-14-341 Health care workers—Verification for contraction or quarantine due to an infectious or contagious disease that is the subject of a public health emergency—RCW 51.32.390. (1) Verification that an infectious or contagious disease has been contracted requires:

(a) A diagnosis from a medical provider made by examination; or

(b) A positive test administered by a medical facility, testing facility, pharmacy, or the employer.

(2) The following cannot be used as verification that a worker has contracted an infectious or contagious disease:

(a) Symptoms only self-reported by the worker;

(b) A report from a medical provider that solely relies on a worker's self-reported positive test results; or

(c) Results from tests administered by the worker and not confirmed by the employer or medical provider.

(3) Verification that a worker has been quarantined due to exposure to the infectious or contagious disease that is the subject of a public health emergency requires:

(a) Written evidence from a medical provider or public health official indicating the worker should remain away from work for a period of time after exposure; or

(b) Confirmation from the employer that it asked the worker to remain away from work for a period of time after exposure.

(4) Quarantine does not include:

(a) Self-quarantine by a worker without direction from a medical provider, public health official, or their employer;

(b) Quarantine, without exposure; or

(c) Quarantine after exposure for a length of time exceeding accepted public safety and health guidelines.

[]

WSR 22-21-121
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 18, 2022, 11:44 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees.

Hearing Location(s): On November 28, 2022, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: December 1, 2022.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by November 25, 2022.

Assistance for Persons with Disabilities: Contact TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to decrease the various business application-related fees required to be paid by persons wanting to open a new business or renew their business license application.

Reasons Supporting Proposal: The department is proposing to amend WAC 458-02-200 to decrease business application fees to new and existing businesses.

Statutory Authority for Adoption: RCW 19.02.030.

Statute Being Implemented: RCW 19.02.075.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined in RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The exemption under RCW 34.05.310 (4)(f) applies to the proposed rule being amended because the rule sets the fees pursuant to RCW 19.02.075.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Atif Aziz
Rules Coordinator

OTS-4149.2

AMENDATORY SECTION (Amending WSR 20-24-067, filed 11/24/20, effective 12/25/20)

WAC 458-02-200 Business licensing service—Applications, licenses, renewals—Fees. (1) **Introduction.** This rule provides information about business license application handling fees, renewal application handling fees, and late filing delinquency fees as described in chapter 19.02 RCW. Information about individual licenses may be obtained from the business licensing service (BLS) of the department of revenue (department) and is available online at dor.wa.gov.

(2) **Definitions.** The definitions in RCW 19.02.020 apply to this rule.

(3) **What fee do I need to pay when applying for or renewing a license?** Individual license fees vary depending on the license(s) for which you are applying or renewing. The fee payable is the total amount of all applicable individual license fees, business license application handling fees, renewal application handling fees, late filing delinquency fees, and other penalty fees. The method of payment may result in additional charges for credit or debit card processing.

(4) **What does the department do with the fees?** The department will distribute the fees received for individual licenses to the respective regulatory agencies. The application and renewal handling fees and the late filing delinquency fees support the operation of the BLS. Credit or debit card payment processing fees are charged and retained by a third-party payment processor.

(5) **When do I get my business license?** A business license will not be issued until the total fees due are collected and all required information has been submitted. Some individual licenses require review and approval by the regulating authorities, and the business license will not be issued until the regulating authorities have approved them.

(6) **Can I get a refund?** The business license application handling fee and renewal application handling fee collected under RCW 19.02.075 are not refundable. The late filing delinquency fee under RCW 19.02.085 may not be waived or refunded unless the department determines that the licensee failed to renew a license by the business license expiration date due to an undisputable error or failure by the department that caused the late filing. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(7) **What are the fees?** The business license application handling fee, renewal application handling fee, late renewal filing delinquency fee, and individual license fee amounts are as follows:

Type of fee:	Fee amount:
Business license application handling fee to open the first business location of a new business, or to reopen a closed business:	((~~$90.00~~)) $50.00

Type of fee:	Fee amount:
Business license application handling fee for an existing business adding a new business location or requesting a city's license endorsement for a nonresident business:	$0
Business license application handling fee for any other purpose(s):	(($~~$19.00~~$)) $10.00
Business license renewal application handling fee:	(($~~$10.00~~$)) $5.00
Late renewal filing delinquency fee:	Up to $150.00 per business location. See subsection (9)(b) of this rule.
Individual license fee:	Varies depending on type of license.

(8) **What should I do with my business license?** The business license document must be displayed in a conspicuous place at the business location for which the license is issued.

(9) **Do I need to renew my business license?**

(a) The various licenses endorsed and displayed on the business license may each have a requirement to be renewed periodically. The department may prorate the terms of individual licenses and associated fees as needed so that all requested licenses on the account are due for renewal at the same time.

(b) Licenses requiring renewal must be renewed by the expiration date or the department will assess a delinquency fee. The delinquency fee is calculated according to RCW 19.02.085 and must be paid by the licensee before a business license is renewed. Other regulatory agencies may also assess delinquency fees and/or penalties for late renewal, and may cancel the individual licenses for nonrenewal. Reissuance of individual licenses canceled for nonrenewal may require the filing of a new business license application.

[Statutory Authority: RCW 19.02.030(3). WSR 20-24-067, § 458-02-200, filed 11/24/20, effective 12/25/20. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 14-08-010, § 458-02-200, filed 3/20/14, effective 4/20/14.]

WSR 22-21-123
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Massage)
[Filed October 18, 2022, 12:31 p.m.]

Supplemental Notice to WSR 22-13-179.

Preproposal statement of inquiry was filed as WSR 21-09-038.

Title of Rule and Other Identifying Information: WAC 246-830-201, 246-830-485, 246-830-490, 246-830-500, and 246-830-510, massage therapists. The board of massage, in coordination with the department of health, is proposing amendments to existing sections of the massage therapist rules to correct the names of the national examinations, clarify the training requirements for somatic education and intra-oral massage education, and clarify and modernize the language in the equipment and sanitation rule and the hygiene rule. The supplemental proposal clarifies that linens must be laundered before use on a client or patient.

Hearing Location(s): On November 30, 2022, at 10:00 a.m. This hearing is being held as a virtual public hearing, without a physical meeting space, https://us02web.zoom.us/webinar/register/WN_y3XbzLDgRLKQzUYNPcutWg.

Date of Intended Adoption: November 30, 2022.

Submit Written Comments to: Megan Maxey, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, megan.maxey@doh.wa.gov, by November 23, 2022.

Assistance for Persons with Disabilities: Contact Megan Maxey, phone 360-236-4945, TTY 711, email megan.maxey@doh.wa.gov, by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make additional amendments to five rules adopted in 2017. The proposed clarifications to WAC 246-830-485, 246-830-490, 246-830-500, and 246-830-510, and corrections to WAC 246-830-201, correctly identify the names of the national examinations required for licensure, and clearly specify the necessary hygiene and sanitation practices in the massage setting in order to protect the health and safety of the public. This supplemental proposal changes language in WAC 246-830-500(6) from the original proposed rule regarding the washing of linens. The proposed language clarifies the intent that all linens used for one client or patient must be laundered or cleaned before they are used on any other client or patient.

Reasons Supporting Proposal: A comprehensive review of the chapter was completed in 2017 which included amendments to WAC 246-830-201, 246-830-485, 246-830-490, and 246-830-500, along with adding new WAC 246-830-510. After the adoption of the rules in 2017, these five sections were identified as needing clarifications and corrections. Following the hearing held on July 29, 2022, it was determined that the proposed rule language needed further amendments to clarify when linens should be laundered and to ensure adequate public protection.

Statutory Authority for Adoption: RCW 18.108.025 and 18.108.085.

Statute Being Implemented: Chapter 18.108 RCW.

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

Name of Proponent: Department of health and board of massage, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Maxey, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4945.

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

A cost-benefit analysis is not required under RCW 34.05.328. No significant analysis is required because the proposed amendments meet the exemption enumerated under RCW 34.05.328 (5)(b)(iv). The purpose of the proposed amendments is to correct typographical errors and clarify the current rule language without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule is exempt under RCW 34.05.310 (4)(d) because all revisions, including the changes in the supplemental [notice], are to correct typographical errors and to clarify the existing rule language without changing the effect of the rule.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary
and Heidi Williams, LMT, Chair
Board of Massage

OTS-3660.2

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-201 Examination. (1) An applicant for a massage therapist license must successfully pass one of the following examinations:

((~~(1)~~)) (a) The federation of state massage therapy boards ((~~and~~)) massage and bodywork licensing examination; ((~~or~~ ~~(2)~~)) (b) The national certification examination for therapeutic massage ((~~therapy~~)) and bodywork; or

((~~(3)~~)) (c) A board-approved examination.

((~~(4)~~)) (2) An applicant who does not pass an examination after three attempts must provide proof to the board of having successfully completed additional clinical training or course work as determined by the board before being permitted three additional attempts to pass an exam.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-201, filed 6/29/17, effective 7/30/17. Statutory Authority: RCW 18.108.025. WSR

91-01-077 (Order 102B), recodified as § 246-830-201, filed 12/17/90, effective 1/31/91; WSR 88-11-011 (Order PM 725), § 308-51-100, filed 5/10/88. Statutory Authority: RCW 18.108.020 and 18.108.070. WSR 85-01-043 (Order PL 501), § 308-51-100, filed 12/13/84. Statutory Authority: RCW 18.108.020. WSR 80-01-018 (Order PL 329, Resolution No. 12/79), § 308-51-100, filed 12/13/79; Order PL 248, § 308-51-100, filed 5/25/76.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-485 Somatic education training program exemption. (1) The secretary may approve an exemption from this chapter for an individual who has completed a somatic education and training program that has a professional organization with a permanent administrative location that oversees the practice of somatic education and training and that has the following:

(a) Standards of practice;

(b) A training accreditation process;

(c) An instructor certification process;

(d) A therapist certification process; and

(e) A code of ethics or code of professional conduct.

(2) An authorized representative must submit a request for approval of a program on forms provided by the secretary.

(3) The secretary in consultation with the board will evaluate the education and training program and grant approval or denial. If denied, applicants will be given the opportunity to appeal through the brief adjudicative hearing process as authorized in chapter 246-10 WAC.

(4) The secretary may request from an approved education and training program, and the program must provide, updated information every three years to ensure the program's compliance with this rule. Approval may be withdrawn if the program fails to maintain the requirements of this rule. Where a determination has been made that the program no longer meets the requirements of this rule and a decision is made to withdraw approval, an approved program may appeal through the brief adjudicative proceeding as authorized in chapter 246-10 WAC.

(5) Organizations representing multiple training programs such as the International Alliance of Healthcare Educators, must obtain an exemption for each training program to ensure clarity regarding what is and is not exempt as a somatic education program.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-485, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW. WSR 00-07-086, § 246-830-485, filed 3/15/00, effective 4/15/00.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-490 Intraoral massage education and training. A massage therapist may perform intraoral massage after completing spe-

cific intraoral massage education and training and after receiving an intraoral massage endorsement to their massage therapist license.

To qualify for an intraoral massage endorsement a massage therapist must complete the following education and training:

(1) Sixteen hours of direct supervised education and training, which must include:

(a) Hands-on intraoral massage techniques, cranial anatomy, physiology, and kinesiology;

(b) Pathology, cautions, and contraindications; and

(c) Hygienic practices, safety and sanitation. Hygienic practices, safety and sanitation includes, but is not limited to:

(i) Gloves must be worn during treatment and training which involves intraoral procedures;

(ii) Fresh gloves must be used for every intraoral client or patient contact;

(iii) Gloves that have been used for intraoral treatment must not be reused for any other purpose; and

(iv) Gloves must not be washed or reused for any purpose. The same pair of gloves must not be used, removed, and reused for the same client or patient at the same visit or for any other purpose.

(2) Supervised education and training must be obtained from a massage therapist endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-490, filed 6/29/17, effective 7/30/17. Statutory Authority: Chapter 18.108 RCW, 2007 c 272. WSR 08-17-001, § 246-830-490, filed 8/6/08, effective 9/6/08.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-500 Equipment, linens, and sanitation. (1) A massage therapist using hydrotherapies including, but not limited to, cabinet, vapor or steam baths, whirlpool, hot tub or tub baths must have ((~~available~~)) adequate shower facilities available for client or patient use.

(2) All cabinets, showers, tubs, basins, massage or steam tables, hydrotherapy equipment, and all other fixed equipment used must be thoroughly cleansed using ((~~an effective~~)) a bactericidal agent in accordance with the manufacturer directions.

(3) Combs, brushes, shower caps, mechanical, massage and hydrotherapy instruments, or bathing devices that come in contact with the body must be sterilized or disinfected by modern and approved methods and instruments. Devices, equipment or parts thereof having been used on one person must be sterilized or disinfected before being used on another person.

(4) Impervious material must cover, full length and width, all massage tables or pads, pillows, bolsters, and face cradles directly under ((~~fresh sheets and linens or disposable paper sheets~~)) single service linens or disposable covers. Impervious materials and surfaces must be disinfected after each use.

(5) A massage therapist must provide single service materials or clean ((~~linen such as sheets, towels, gowns, pillow cases, and all other~~)) linens used in the practice of massage. Linens must be stored in a sanitary manner.

(6) All ((~~towels and~~)) linens used for one client or patient must be laundered or cleaned before they are used on any other client or patient.

(7) All soiled linens must be immediately placed in a covered receptacle.

(8) Soap and clean towels must be provided by the massage therapist for use by massage therapists, clients or patients and any employees.

(9) All equipment must be clean, ((~~well~~)) in good repair, and maintained ((~~and in good repair~~)) to industry standards.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-500, filed 6/29/17, effective 7/30/17.]

AMENDATORY SECTION (Amending WSR 17-14-062, filed 6/29/17, effective 7/30/17)

WAC 246-830-510 Hygiene. To maintain a professional standard of hygiene in their practice, a massage therapist must:

(1) Cleanse ((~~their~~)) any exposed body part used for applying treatment, before and after each treatment, using a sink with ((~~hot~~)) water and soap or a chemical germicidal product;

(2) Maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment and in the case of broken skin use a finger cot, glove or chemical barrier product to cover the affected area during treatment; and

(3) Wear clothing that is clean.

[Statutory Authority: RCW 18.108.025 (1)(a), 18.108.085 (1)(a), 43.70.041 and chapter 18.108 RCW. WSR 17-14-062, § 246-830-510, filed 6/29/17, effective 7/30/17.]

WSR 22-21-125
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 18, 2022, 12:50 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-338-990 Fees. The department of health (department) is proposing increases to initial and renewal licensing fees for medical test sites.

Hearing Location(s): On November 30, 2022, at 11:00 a.m. In order to help mitigate the transmission of coronavirus disease 2019 (COVID-19), the department will not provide a physical location. A virtual public hearing, without a physical meeting space, will be held instead.

We invite you to participate in our public rules hearing using your computer, tablet or smartphone.

Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_KtyjCFXHQlORpJOJx1o-9w.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 7, 2022.

Submit Written Comments to: Elizabeth Parent, P.O. Box 47852, Olympia, WA 98504, email https://fortress.wa.gov/doh/policyreview, by November 30, 2022.

Assistance for Persons with Disabilities: Contact Elizabeth Parent, phone 360-999-7769, TTY 711, email Elizabeth.parent@doh.wa.gov, by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To address the rising costs of the medical test site program, negative cash flow, and build the recommended reserve, the department proposes raising medical test site licensing and renewal fees across all license categories effective April 1, 2023.

A medical test site is a laboratory that analyzes materials derived from the human body for the purposes of health care, treatment, or screening. The Centers for Medicare and Medicaid Services (CMS) regulates medical test sites through the clinical laboratory improvement amendments (CLIA) for all laboratories in the United States that test human samples for diagnosis and treatment. CMS issues exemptions from CLIA to states who apply and can demonstrate that they have regulations that are equivalent or more stringent and they follow CLIA guidelines (e.g., initial, and routine inspections at specific intervals).

Washington is an exempt state that retains regulatory authority at the state level, licensing and regulating more than 6,200 medical test sites to assure [ensure] they meet health and safety requirements. The exemption also includes the federal CLIA fee, so applicants pay only one fee to the department that includes both their state license and CLIA certification fee. Regulation of medical test sites includes issuing credentials, conducting initial and ongoing on-site inspections, following up on deficiencies, performing complaint investigations, monitoring test results for accuracy and reliability, and providing consultation and technical assistance.

The medical test site program assesses licensing fees on a two-year cycle and prorates fees for any new test sites licensed prior to the renewal period. The categorized and accredited license fee sched-

ules align with the federal CLIA fee categories and have a tiered schedule of rates set by the department based on the number of annual tests. The certificate of waiver and provider performed microscopic procedure license fees are set at a biennial rate of $190 and $250, respectively.

The certificate of waiver and the provider performed microscopic procedure fees will rise 36 percent and 16 percent, respectively, due to the additional oversight and administrative requirements required for these license types. The remaining license fees will rise 11 percent. The fee amounts proposed are what the department has determined are necessary to fund current and future program operations in accordance with RCW 43.70.250 (license fees for professions, occupations, and businesses), RCW 70.42.090 (regarding license fees for medical test sites), and the department's six-year fee recovery policy.

Reasons Supporting Proposal: RCW 70.42.090 and 43.70.250 require fees to fully fund the work of licensing and regulating health care facilities. Current revenue is not sufficient to maintain a positive fund balance throughout the biennium's two-year licensing cycle, resulting in a negative fund balance.

The department raised fees in November 2020 to bring revenue into compliance with routine cost increases. The program ended fiscal year (FY) 2021 with a fund balance of $1,157,000 but will end FY 2022 with a balance of -$186,000. The negative fund balance in FY 2022 is attributable to a 49 percent increase in the number of medical test site licensees and the added operational and support costs that come with it.

In addition, the medical test site program experienced an increase in CMS oversight requirements, policy and interested party activity, and a projected increase to the CMS exemption fee. Also, CMS determined that Washington lacked the needed skill set to provide oversight to labs providing cytology services, and the department will need to contract with an external agency to provide validation surveys of labs that provide cytology services.

The office of financial management also requires agencies to maintain a reasonable working capital reserve in state accounts to cover fluctuations in cash flow, which is typically two months of expenditures. The department forecasts the fund balance to fall below the recommended reserve level by $450,000 in June 2027 and $3,384,000 in June 2028.

The department projects that the costs required to support this growth will be $1.3 million more than the previous projections made for the November 2020 fee increase. Due to these changes, the fund balance is projected to decrease to $156,000 by June 2027 and -$2,762,000 by June 2028.

In light of the program's financial forecast, the program requires a fee increase to bring revenue into alignment with the adjusted costs of regulating medical test sites.

Statutory Authority for Adoption: RCW 43.70.250, 70.42.090.

Statute Being Implemented: RCW 43.70.250, 70.42.090.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Ross Valore, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4531; Implementation and Enforcement: Elizabeth Parent, 111 Israel Road S.E., Tumwater, WA 98501, 360-999-7769.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-4093.1

AMENDATORY SECTION (Amending WSR 20-20-030, filed 9/29/20, effective 11/1/20)

WAC 246-338-990 Fees. (1) The department will assess and collect biennial fees for medical test sites as follows:

(a) Charge fees, based on the requirements authorized under RCW 70.42.090 and this section;

(b) Assess additional fees when changes listed in WAC 246-338-026 occur that require a different type of license than what the medical test site currently holds;

(c) Charge prorated fees for the remainder of the two-year cycle when the owner or applicant applies for an initial license during a biennium as defined under WAC 246-338-022 (2)(c);

(d) Charge prorated fees for licenses issued for less than a two-year period under WAC 246-338-024(3); and

(e) Determine fees according to criteria described in Table 990-1.

Table 990-1 License Categories and Fees

Category of License	Number of Tests/Year	Biennial Fee
Certificate of Waiver	N/A	(($~~$190~~$)) $260
PPMP	N/A	(($~~$250~~$)) $300
Low Volume	1-2,000 tests	(($~~$560~~$)) $620
Category A	2,001-10,000 tests, 1-3 specialties	(($~~$1,710~~$)) $1,900

Table 990-1 License Categories and Fees

Category of License	Number of Tests/Year	Biennial Fee
Category B	2,001-10,000 tests, 4 or more specialties	((~~$2,210~~)) $2,450
Category C	10,001-25,000 tests, 1-3 specialties	((~~$3,070~~)) $3,410
Category D	10,001-25,000 tests, 4 or more specialties	((~~$3,520~~)) $3,910
Category E	25,001-50,000 tests	((~~$4,230~~)) $4,700
Category F	50,001-75,000 tests	((~~$5,230~~)) $5,810
Category G	75,001-100,000 tests	((~~$6,240~~)) $6,930
Category H	100,001-500,000 tests	((~~$7,290~~)) $8,090
Category I	500,001-1,000,000 tests	((~~$12,960~~)) $14,390
Category J	> 1,000,000 tests	((~~$15,550~~)) $17,260
Accredited:		
Low Volume	1-2,000 tests	((~~$210~~)) $230
Category A	2,001-10,000 tests, 1-3 specialties	((~~$260~~)) $290
Category B	2,001-10,000 tests, 4 or more specialties	((~~$290~~)) $320
Category C	10,001-25,000 tests, 1-3 specialties	((~~$660~~)) $730
Category D	10,001-25,000 tests, 4 or more specialties	((~~$700~~)) $780
Category E	25,001-50,000 tests	((~~$980~~)) $1,090
Category F	50,001-75,000 tests	((~~$1,570~~)) $1,740
Category G	75,001-100,000 tests	((~~$2,150~~)) $2,390
Category H	100,001-500,000 tests	((~~$2,780~~)) $3,090
Category I	500,001-1,000,000 tests	((~~$8,040~~)) $8,920
Category J	> 1,000,000 tests	((~~$10,210~~)) $11,330
Follow-up survey for deficiencies		Direct staff time
Complaint investigation		Direct staff time

(2) The following programs are excluded from fee charges when performing only waived hematocrit or hemoglobin testing for nutritional evaluation and food distribution purposes:

(a) Women, infant and children programs (WIC); and

(b) Washington state migrant council.

[Statutory Authority: RCW 43.70.250 and 70.42.090. WSR 20-20-030, § 246-338-990, filed 9/29/20, effective 11/1/20. Statutory Authority: RCW 70.42.090. WSR 06-15-132, § 246-338-990, filed 7/19/06, effective 8/19/06. Statutory Authority: RCW 70.42.090 and 2002 c 371. WSR 02-12-105, § 246-338-990, filed 6/5/02, effective 7/6/02. Statutory Authority: RCW 70.42.005, 70.42.060. WSR 01-02-069, § 246-338-990, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.42.090. WSR 99-24-061, § 246-338-990, filed 11/29/99, effective 12/30/99; WSR 96-12-011, § 246-338-990, filed 5/24/96, effective 6/24/96. Statutory Authority: Chapter 70.42 RCW. WSR 94-17-099, § 246-338-990, filed 8/17/94, effective 9/17/94; WSR 93-18-091 (Order 390), § 246-338-990, filed 9/1/93, effective 10/2/93; WSR 91-21-062 (Order 205), § 246-338-990, filed 10/16/91, effective 10/16/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-338-990, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.42 RCW. WSR 90-20-017 (Order 090), § 248-38-120, filed 9/21/90, effective 10/22/90.]

WSR 22-21-127
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-02—Filed October 18, 2022, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-078.

Title of Rule and Other Identifying Information: Implementation of E2SHB 1688 (chapter 263, Laws of 2022) Balance Billing Protection Act (BBPA) and the Federal No Surprises Act.

Hearing Location(s): On November 29, 2022, at 4:00 p.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website https://www.insurance.wa.gov/implementation-e2shb-1688-r-2022-02.

Date of Intended Adoption: November 30, 2022.

Submit Written Comments to: Jane Beyer, 302 Sid Snyder Avenue S.W., Olympia, WA 98504, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 28, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by November 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 263, Laws of 2022 amends state law related to health carrier coverage of emergency services, BBPA, and network access provisions for services subject to the balance billing prohibition under BBPA. Rule making is necessary to revise the independent review organization rule at chapter 284-43A WAC, BBPA rules at chapter 284-43B WAC, and OIC network access rules at chapter 284-170 WAC to be consistent with the new law. The rules will facilitate implementation of the law changes by ensuring that all affected entities understand their rights and obligations under the new law.

Reasons Supporting Proposal: Revisions to current rules are needed to address conflicts between statute and rules on the same subject. These rule revisions are needed to ensure consistency.

Statutory Authority for Adoption: Sections 5, 19, and 20 (amending RCW 48.49.110), chapter 263, Laws of 2022.

Statute Being Implemented: Chapter 263, Laws of 2022 (E2SHB 1688).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40255, Olympia, WA 98504-0255, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

Is partially exempt:

Explanation of partial exemptions:

Chapter 19.85 RCW states that "… an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more than minor costs on businesses in an industry[1] …" The small business economic impact statement (SBEIS) must include "… a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements …. To determine whether the proposed rule will have a disproportionate cost impact on small businesses[2]."

1 RCW 19.85.030: http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030.

2 RCW 19.85.040: http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(4), the businesses that must comply with the proposed rule are not small businesses under chapter 19.85 RCW. OIC has found that none of the existing health insurance issuers, health care providers, and facilities may be considered small businesses under RCW 19.85.020(3).

Health Insurance Carriers: The average number of employees per firm was determined below using Bureau of Labor Statistics data:

Average number of firms: 58

Average annual employment over 12 months: 6,777

Average number of employees per firm: 118

The average number of employees for a direct health and medical insurance carrier is 118 employees, above the small business threshold of 50 under chapter 19.85.020(3).

Health Care Providers and Facilities: For all but one category of health care providers and facilities discussed below, the state statute and rule incorporate provisions of the federal No Surprises Act which these entities would need to comply with even if this rule was not adopted.

The one group of providers and facilities added by state law that are not explicitly included in the No Surprises Act are behavioral health emergency services providers. These services are offered through behavioral health agencies licensed under chapter 71.24 RCW. The primary cost to these agencies as a result of this rule is from the requirement to post and distribute consumer rights notices (WAC 284-43B-050 (2)(b)). The notices must be posted on their website in a prominent location. The rule also states that behavioral health emergency services providers must provide or mail the consumer rights notice to patients within 72 hours of their receipt of emergency services. However, WAC 284-43B-050 (2)(b)(i) only requires facilities or providers that are owned and operated independently from all other businesses and that have more than 50 employees to comply with this requirement. Therefore, this cost does not impact small businesses as defined in RCW 19.85.020(3).

It is expected that, under this rule, behavioral health emergency services providers will also likely incur costs to revise their standard operating procedures and provide training in order to appropriately provide consumer rights notices, patient disclosures, and manage out-of-network billing practices. The cost benefit analysis for this rule estimates that this will include a one-time cost of $5,070 with an additional cost of $1,824 per year for training necessary person-

nel. This amounts to a three-year average cost of $2,906. Based on 2020 financial data from the Washington department of revenue (DOR) and the United States Bureau of Labor Statistics (USBLS), the cost of posting the notices to the facilities' and providers' websites does not exceed the minor cost threshold estimate. The NAICS code 624190 was used, which includes entities such as community action services agencies, crisis intervention centers, and multipurpose social services centers.

NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of AVG Annual Payroll	0.3% of AVG Annual Gross Business Income
624190	$2,906	Other individual and family services	$8,958.48	$8,958.48 2020 Dataset pulled from USBLS	$982.24 2020 Dataset pulled from DOR

Arbitrators: It is possible that this rule will impose a cost to arbitrators. The rule states that "arbitrators must charge a fixed fee for single claim proceedings within the range of $200 - $650. If an arbitrator chooses to charge a different fixed fee for bundled claim proceeding, that fee must be within the range of $260 - 800."[3] Under the existing BBPA rule, arbitrators set their own fees at a market rate.

3 R2022-02 Implementation of E2SHB 1688 Second prepublication draft, OIC (September 2, 2022) https://www.insurance.wa.gov/sites/default/files/documents/e2shb-1688-second-pre-publication-draft.pdf.

Using the survey data, OIC calculated the average amount collected in fees for BBPA arbitrations over the course of one year. This was then compared to the upper bound of the range set in this rule for single claim proceedings ($650). When comparing the expected total fees collected over the course of the year with a fixed fee of $650 and the actual fees collected over a year, the average difference was actually higher by $85 under the fixed fee scenario. This indicates that under this rule with fixed fees for the single claim proceedings, assuming the highest fee within the fixed range is used, the cost to arbitrators is -$85. The highest fee within the fixed fee range for the proposed rule is generally higher than the fee arbitrators currently set. Although, it should be noted that if instead the current arbitrator fees are compared to the minimum fee within the fixed fee range, there is an average annual cost to arbitrators of $3,875. To determine a final cost estimate, OIC used the average of the set fee range ($425). This results in an annual cost to arbitrators of $2,006.70. Zero of the respondents indicated that they charge different fees for bundled claim proceedings. The fees for the bundled claim proceedings were not significantly higher and did not change the outcome of the analysis.

NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of AVG Annual Payroll	0.3% of AVG Annual Gross Business Income
541110	$2,006	Offices of lawyers	$5,864.74	$5,864.74 2020 Dataset pulled from ESD	$2,900.60 2020 Dataset pulled from DOR
541199	$2,006	All other legal services	$3,717.62	$3,717.62 2020 Dataset pulled from ESD	$1,597.16 2020 Dataset pulled from DOR

OIC determines that this rule is exempt from small business economic impact statement requirements.

October 18, 2022

Mike Kreidler
Insurance Commissioner

OTS-4112.1

AMENDATORY SECTION (Amending WSR 16-23-168, filed 11/23/16, effective 1/1/17)

WAC 284-43A-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; ((~~or~~))

(e) A carrier's denial of an application for coverage; or

(f) Any adverse determination made by a carrier under RCW 48.49.020, 48.49.030, or sections 2799A-1 or 2799A-2 of the Public Health Service Act (42 U.S.C. Sec. 300gg-111 or 300gg-112) and federal regulations implementing those provisions of P.L. 116-260. Examples of such determinations include, but are not limited to:

(i) Calculation of enrollee cost-sharing;

(ii) Application of consumer cost-sharing to an enrollee's deductible and maximum out-of-pocket; and

(iii) Determination of whether a claim is subject to the Balance Billing Protection Act.

(2) "Appellant" means an applicant or a person covered as an enrollee, subscriber, policyholder, participant, or beneficiary of an individual or group health plan, and when designated, their representative, as defined in WAC 284-43-3010. Consistent with the requirements of WAC 284-43-3170, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

(3) "Applicant" means a person or entity seeking to become a Washington certified independent review organization (IRO).

(4) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-4040 and 284-43-4060.

(5) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-0160(14).

(6) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(7) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(8) "Clinical reviewer" means a medical reviewer, as defined in this section.

(9) "Conflict of interest" means violation of any provision of WAC 284-43A-050 including, but not limited to, material familial, professional and financial affiliations.

(10) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage and contract provisions, that reviewer shall have the qualifications required of a contract specialist and clinical reviewer.

(11) "Commissioner" means the Washington state insurance com-missioner.

(12) "Enrollee" or "covered person" means an individual covered by a health plan including a subscriber, a policyholder, or beneficiary of a group plan, as defined in WAC 284-43-0160(5); means an "appellant" as defined in WAC 284-43-3010; and also means a person lawfully acting on behalf of the enrollee including, but not limited to, a parent or guardian.

(13) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(14) "Health care provider" or "provider" as used in WAC 284-43-0160 (13)(a) and (b), means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(15) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

(16) "Independent review organization" or "IRO" means an entity certified by the commissioner under this chapter.

(17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

(19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

(20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

(21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical and mental health journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

(22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.535.

(23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

[Statutory Authority: RCW 48.02.060, 48.43.535, and 48.43.537. WSR 16-23-168 (Matter No. R 2016-17), § 284-43A-010, filed 11/23/16, effective 1/1/17.]

OTS-4113.2

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-010 Definitions. (1) The definitions in RCW 48.43.005 apply throughout this chapter unless the context clearly re-

quires otherwise, or the term is defined otherwise in subsection (2) of this section.

(2) The following definitions shall apply throughout this chapter:

(a) "Air ambulance service" has the same meaning as defined in RCW 48.43.005.

(b) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

((~~(b)~~)) (c) "Balance bill" means a bill sent to an enrollee by ((~~an out-of-network~~)) a nonparticipating provider ((~~or~~)), facility, behavioral health emergency services provider or air ambulance service provider for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of ((~~permitted~~)) cost-sharing allowed under WAC 284-43B-020.

((~~(c)~~)) (d) "Behavioral health emergency services provider" has the same meaning as defined in RCW 48.43.005.

(e) "De-identified" means, for the purposes of this rule, the removal of all information that can be used to identify the patient from whose medical record the health information was derived.

((~~(d)~~)) (f) "Emergency medical condition" ((~~means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder treatment attention to result in a condition (i) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.~~

~~(e) "Emergency services" means a medical screening examination, as required under section 1867 of the Social Security Act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the Social Security Act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867 (e)(3) of the Social Security Act (42 U.S.C. 1395dd (e)(3)).~~

~~(f)~~)) has the same meaning as defined in RCW 48.43.005.

(g) "Emergency services" has the same meaning as defined in RCW 48.43.005.

(h) "Facility" or "health care facility" means:

(i) With respect to the provision of emergency services, a hospital or freestanding emergency department licensed under chapter 70.41 RCW (including an "emergency department of a hospital" or "independent freestanding emergency department" described in section 2799A-1(a) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(a) and 45 C.F.R. Sec. 149.30)) or a behavioral health emergency services provider; and

(ii) With respect to provision of nonemergency services, a hospital licensed under chapter 70.41 RCW, a hospital outpatient department, a critical access hospital or an ambulatory surgical facility licensed under chapter 70.230 RCW (including a "health care facility" described in section 2799A-1(b) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(b) and 45 C.F.R. Sec. 149.30)).

(i) "Hospital outpatient department" means an entity or site that provides outpatient services and:

(i) Is a provider-based facility under 42 C.F.R. Sec. 413.65;

(ii) Charges a hospital facility fee in billing associated with the receipt of outpatient services from the entity or site; or

(iii) Bills the consumer or their health plan under a hospital's national provider identifier or federal tax identification number.

((~~(g)~~)) (j) "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations. A single case reimbursement agreement between a provider or facility and a carrier used for the purpose described in WAC 284-170-200 constitutes a contract exclusively for purposes of this definition under the Balance Billing Protection Act and is limited to the services and parties to the agreement.

((~~(h) "Median in-network contracted rate for the same or similar service in the same or similar geographical area" means the median amount negotiated for an emergency or surgical or ancillary service for participation in the carrier's health plan network with in-network providers of emergency or surgical or ancillary services furnished in the same or similar geographic area. If there is more than one amount negotiated with the health plan's in-network providers for the emergency or surgical or ancillary service in the same or similar geographic area, the median in-network contracted rate is the median of these amounts. In determining the median described in the preceding sentence, the amount negotiated for each claim for the same or similar service with each in-network provider is treated as a separate amount (even if the same amount is paid to more than one provider or to the same provider for more than one claim). If no per-service amount has been negotiated with any in-network providers for a particular service, the median amount must be calculated based upon the service that is most similar to the service provided. For purposes of this subsection "median" means the middle number of a sorted list of reimbursement amounts negotiated with in-network providers with respect to a certain emergency or surgical or ancillary service, with each paid claim's negotiated reimbursement amount separately represented on the list, arranged in order from least to greatest. If there is an even number of items in the sorted list of negotiated reimbursement amounts, the median is found by taking the average of the two middlemost numbers.~~

~~(i)~~)) (k) "Nonemergency health care services performed by nonparticipating providers at certain participating facilities" has the same meaning as defined in RCW 48.43.005.

(l) "Offer to pay," "carrier payment," or "payment notification" means a claim that has been adjudicated and paid by a carrier to ((~~an out-of-network or~~)) a nonparticipating provider for emergency services or for ((~~surgical or ancillary services provided at an in-network facility~~)) nonemergency health care services performed by nonparticipating providers at certain participating facilities.

((~~(j)~~)) (m) "Out-of-network" or "nonparticipating" ((~~means a provider or facility that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees~~)) has the same meaning as defined in RCW 48.43.005.

((~~(k)~~)) (n) "Provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law, or an employee or agent of a person acting in the course and scope of his or her employment, that provides emergency services, or ((~~surgical or ancillary services at an in-network facility.~~

~~(l) "Surgical or ancillary services" means surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services~~)) nonemergency health care services at certain participating facilities.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-010, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-010, filed 11/19/19, effective 12/20/19.]

NEW SECTION

WAC 284-43B-015 Coverage of emergency services. (1) Coverage of emergency services is governed by RCW 48.43.093. Emergency services, as defined in RCW 48.43.005, include services provided after an enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to medical, mental health or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant person, the health of a person or their unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(2) A carrier may require notification of stabilization or inpatient admission of an enrollee as provided in RCW 48.43.093. Regardless of such notification, payment and cost-sharing for poststabilization services provided by a nonparticipating facility, provider or behavioral health emergency services provider and dispute resolution related to those services are governed by RCW 48.49.040 and 48.49.160.

[]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing. (1) If an enrollee receives any emergency services from ((~~an out-of-network~~)) a nonparticipating facility ((~~or~~)), provider, or behavioral health emergency services provider, any nonemergency ((~~surgical or ancillary services at an in-network facility from an out-of-network provider~~)) health care services performed by a nonparticipat-

ing provider at certain participating facilities, or any air ambulance services from a nonparticipating provider:

(a) The enrollee satisfies ((~~his or her~~)) their obligation to pay for the health care services if ((~~he or she pays~~)) they pay the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be ((~~determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographical area~~)) calculated as if the total amount charged for the services were equal to:

(i) For emergency services other than services provided by emergency behavioral health services facilities, for nonemergency health care services performed by a nonparticipating provider at certain participating facilities, and for air ambulance services, the lesser of the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140, or billed charges; and

(ii) For services provided by emergency behavioral health services facilities, the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140. The carrier must provide an explanation of benefits to the enrollee and the ((~~out-of-network~~)) nonparticipating provider, facility, emergency behavioral health services provider or air ambulance provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, ((~~out-of-network~~)) nonparticipating provider, ((~~or out-of-network~~)) nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance provider and any agent, trustee, or assignee of the carrier, ((~~out-of-network~~)) nonparticipating provider, ((~~or out-of-network~~)) nonparticipating facility, nonparticipating emergency behavioral health services provider or nonparticipating air ambulance provider must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c)(i) For emergency services provided to an enrollee, the ((~~out-of-network~~)) nonparticipating provider ((~~or out-of-network~~)), nonparticipating facility, or nonparticipating emergency behavioral health services provider and any agent, trustee, or assignee of the ((~~out-of-network~~)) nonparticipating provider ((~~or out-of-network~~)), nonparticipating facility or nonparticipating behavioral health emergency services provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's, facility's, or behavioral health emergency services provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest;

(ii) ((~~For emergency services provided to an enrollee in an out-of-network hospital located and licensed in Oregon or Idaho, the carrier must hold an enrollee harmless from balance billing; and~~

~~(iii)~~)) For nonemergency ((~~surgical or ancillary services provided at an in-network facility~~)) health care services performed by nonparticipating providers at certain participating facilities, the ((~~out-of-network~~)) nonparticipating provider and any agent, trustee, or assignee of the ((~~out-of-network~~)) nonparticipating provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest.

(d) For emergency services ((~~and~~)), nonemergency ((~~surgical or ancillary services provided at an in-network facility~~)) health care services performed by nonparticipating providers at certain participating facilities and air ambulance services, the carrier must treat any cost-sharing amounts determined under (a) of this subsection paid or incurred by the enrollee for ((~~an out-of-network provider or facility's~~)) a nonparticipating provider's, facility's, behavioral health emergency services provider's or air ambulance provider's services in the same manner as cost-sharing for health care services provided by ((~~an in-network~~)) a participating provider ((~~or~~)), facility, behavioral health emergency services provider, or air ambulance services provider and must apply any cost-sharing amounts paid or incurred by the enrollee for such services toward the enrollee's deductible and maximum out-of-pocket payment obligation.

(e) If the enrollee pays ((~~an out-of-network~~)) a nonparticipating provider ((~~or out-of-network~~)), nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the ((~~provider or facility~~)) nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider must refund any amount in excess of the in-network cost-sharing amount to the enrollee within ((~~thirty~~)) 30 business days of the ((~~provider or facility's~~)) nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider's receipt of the enrollee's payment. Simple interest must be paid to the enrollee for any unrefunded payments at a rate of ((~~twelve~~)) 12 percent ((~~per annum~~)) beginning on the first calendar day after the ((~~thirty~~)) 30 business days.

(2) The carrier must make payments for health care services described in RCW 48.49.020, provided by ((~~an out-of-network provider or facility~~)) a nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider directly to the provider or facility, rather than the enrollee.

(3) A health care provider ((~~or facility, or any of its agents, trustees or assignees may not require a patient at any time, for any procedure, service, or supply, to sign or execute by electronic means, any document that would attempt to avoid, waive, or alter any provision of this section~~)), health care facility, behavioral health emergency services provider or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260. This prohibition supersedes any provision of sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260 that would authorize a provider or facility to ask a patient to consent to waive their balance billing protections.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-020, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-020, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-030 Out-of-network claim payment and placing a claim into dispute. For services described in RCW 48.49.020(1) (other than air ambulance services) provided prior to July 1, 2023, or a later date determined by the commissioner, and for services provided by a nonparticipating emergency behavioral health services provider if the federal government does not authorize use of the federal independent dispute resolution system for these disputes, the allowed amount paid to ((~~an out-of-network provider for health care services described under RCW 48.49.020~~)) a nonparticipating provider or facility for emergency services and nonemergency health care services performed by nonparticipating providers at certain participating facilities, shall be a commercially reasonable amount, based on payments for the same or similar services provided in the same or a similar geographic area.

(1) Within ((~~thirty~~)) 30 calendar days of receipt of a claim from ((~~an out-of-network~~)) a nonparticipating provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. Payment of an adjudicated claim shall be considered an offer to pay. The amount actually paid to ((~~an out-of-network~~)) a nonparticipating provider by a carrier may be reduced by the applicable consumer cost-sharing determined under WAC 284-43B-020 (1)(a). The date of receipt by the provider or facility of the carrier's offer to pay is five calendar days after a transmittal of the offer is mailed to the provider or facility, or the date of transmittal of an electronic notice of payment. The claim submitted by the ((~~out-of-network~~)) nonparticipating provider or facility to the carrier must include the following information:

(a) Patient name;

(b) Patient date of birth;

(c) Provider name;

(d) Provider location;

(e) Place of service, including the name and address of the facility in which, or on whose behalf, the service that is the subject of the claim was provided;

(f) Provider federal tax identification number;

(g) Federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number;

(h) Date of service;

(i) Procedure code; and

(j) Diagnosis code.

(2) If the ((~~out-of-network~~)) nonparticipating provider or facility wants to dispute the carrier's offer to pay, the provider or facility must notify the carrier no later than ((~~thirty~~)) 30 calendar days after receipt of the offer to pay or payment notification from the carrier. A carrier may not require a provider or facility to reject or return payment of the adjudicated claim as a condition of putting the payment into dispute.

(3) If the ((~~out-of-network~~)) nonparticipating provider or facility disputes the carrier's offer to pay, the carrier and provider or facility have ((~~thirty~~)) 30 calendar days after the provider or facility receives the offer to pay to negotiate in good faith.

(4) If the carrier and the ((~~out-of-network~~)) nonparticipating provider or facility do not agree to a commercially reasonable payment

amount within the ((~~thirty-calendar~~)) 30-calendar day period under subsection (3) of this section, and the carrier, ((~~out-of-network~~)) nonparticipating provider or ((~~out-of-network~~)) nonparticipating facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration, as provided in RCW 48.49.040.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-030, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-030, filed 11/19/19, effective 12/20/19.]

NEW SECTION

WAC 284-43B-032 Applicable dispute resolution system. (1) Effective for services provided on or after July 1, 2023, or a later date determined by the commissioner, services described in RCW 48.49.020(1) other than air ambulance services are subject to the independent dispute resolution process established in sections 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those sections of P.L. 116-260 (enacted December 27, 2020). Until July 1, 2023, or a later date determined by the commissioner, the arbitration process in this chapter governs the dispute resolution process for those services.

(2) Effective for services provided on or after July 1, 2023, or a later date determined by the commissioner, if the federal independent dispute resolution process is available to the state, behavioral emergency services provider services described in RCW 48.49.020(3) are subject to the independent dispute resolution process established in section 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those sections of P.L. 116-260 (enacted December 27, 2020). Until July 1, 2023, or a later date determined by the commissioner, or if the federal independent dispute resolution process is not available to the state for resolution of these disputes, the arbitration process in this chapter governs the dispute resolution process for those services.

(3) The office of the insurance commissioner must provide a minimum of four months advance notice of the date on which the dispute resolution process will transition to the federal independent dispute resolution process. The notice must be posted on the website of the office of the insurance commissioner.

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AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-035 Arbitration initiation and selection of arbitrator. (1)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than ((~~ten~~)) 10 calendar days following

completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form found in Appendix A of this rule. A request must be submitted electronically through the website of the office of the insurance commissioner. When multiple claims are addressed in a single arbitration proceeding, subsection (3) of this section governs calculation of the ((~~ten~~)) 10 calendar days. Each arbitration initiation request must be submitted to the commissioner individually and constitutes a distinct arbitration proceeding unless consolidation of requests is authorized by a court under chapter 7.04A RCW. The commissioner will assign a unique number or designation to each arbitration initiation request. The parties must include that designation in all communication related to that request. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider or facility initiating arbitration must send the arbitration initiation request form to the email address appearing on the website established by the designated lead organization for administration simplification in Washington state under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed.

(b) The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in WAC 284-43B-030 (1) through (3) and subsection (1)(a) of this section. The commissioner's review of the arbitration initiation request form is limited to the information necessary to determine that the request has been timely submitted and is complete. The commissioner's review does not include a review of whether particular claims included in the request are subject to chapter 48.49 RCW or whether claims are appropriately bundled under subsection (3) of this section. A party seeking to challenge whether a claim is subject to chapter 48.49 RCW or whether claims are appropriately bundled may raise those issues during arbitration.

(c) Each carrier must provide the designated lead organization for administrative simplification in Washington state with the email address and telephone number of the carrier's designated contact for receipt of notices to initiate arbitration. The email address and phone number provided must be specific to the carrier staff responsible for receipt of notices or other actions related to arbitration proceedings. The initial submission of information to the designated lead organization must be made on or before November 10, 2020. The carrier must keep its contact information accurate and current by submitting updated contact information to the designated lead organization as directed by that organization.

(2) Within ((~~ten~~)) 10 business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must prohibit either party from sharing or making use of any confidential or proprietary information acquired or used for purposes of one arbitration in any subsequent arbitration proceedings. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under RCW 48.49.040 or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

(3) If ((~~an out-of-network~~)) a nonparticipating provider or ((~~out-of-network~~)) nonparticipating facility chooses to address multi-

ple claims in a single arbitration proceeding as provided in RCW 48.49.040, notification must be provided no later than ((~~ten~~)) 10 calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:

(a) Involve identical carrier and provider, provider group or facility parties. ((~~A provider group may bundle claims billed using a common federal taxpayer identification number on behalf of the provider members of the group;~~)) Items and services are billed by the same provider, provider group or facility if the items or services are billed with the same national provider identifier or tax identification number;

(b) ((~~Involve claims with the same or related current procedural terminology codes relevant to a particular procedure~~)) Involve the same or similar items and services. The services are considered to be the same or similar items or services if each is billed under the same service code, or a comparable code under a different procedural code system, such as current procedural terminology (CPT) codes with modifiers, if applicable, health care common procedure coding system (HCPCS) with modifiers, if applicable, or diagnosis-related group (DRG) codes with modifiers, if applicable; and

(c) Occur within ((~~a two month~~)) the same 30 business day period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than ((~~two months~~)) 30 business days prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

(4) A notification submitted to the commissioner later than ((~~ten~~)) 10 calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. Any revision to a previously timely submitted arbitration initiation request form must be submitted to the commissioner within the 10 calendar day period applicable to submission of the original request. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email ((~~address~~)) addresses for the initiating party and the noninitiating party ((~~provided~~)) indicated on the arbitration initiation request form for all communication related to the arbitration request. The arbitrator selection process must be completed within ((~~twenty~~)) 20 calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of ((~~five arbitrators~~)) two individual arbitrators and three arbitration entities within five calendar days of receipt of notice from the parties under this subsection. Each party is responsible for reviewing the list of five arbitrators and arbitration entities and notifying the commissioner and the other party within three calendar days of receipt of the list:

(i) Whether they are taking the opportunity to veto up to two of the five arbitrators or arbitration entities on this list, and if so, which arbitrators or arbitration entities have been vetoed; and

(ii) If there is a conflict of interest as described in subsection (6) of this section with any of the arbitrators or arbitration entities on the list, to avoid the commissioner assigning an arbitrator or arbitration entity with a conflict of interest to an arbitration.

(b) If, after the opportunity to veto up to two of the five named arbitrators or arbitration entities on the list of five arbitrators and arbitration entities sent by the commissioner to the parties, more than one arbitrator or arbitration entity remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators or arbitration entities. The commissioner will choose the arbitrator from among the remaining arbitrators on the list. If a party fails to timely provide the commissioner with notice of their veto, the commissioner will choose the arbitrator from among the remaining arbitrators or arbitration entities on the list.

(6) Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of interest includes (a) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (b) serves as or was employed by a physician, health care provider, or a health care facility; (c) has a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned.

(7) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.

(8) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.

(9) ((~~Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.~~

~~(10) If the parties settle the dispute before the arbitrator issues a decision, the parties must submit to the commissioner notice of the date of the settlement and whether the settlement includes an agreement for the provider to contract with the carrier as an in-network provider.~~

~~(11) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.~~

~~(12) The arbitrator must submit to the commissioner:~~

~~(a) Their decision; and~~

~~(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule.~~)) Where a dispute resolution matter initiated under sections 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those provisions of P.L. 116-260 (enacted December 27, 2020) results in a determination by a certified independent dispute resolution entity that such process does not apply to the dis-

pute or to portions thereof, RCW 48.49.040 (3)(b) governs initiation of arbitration under this chapter.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-035, filed 11/2/20, effective 12/3/20.]

NEW SECTION

WAC 284-43B-037 Arbitration proceedings. (1) For purposes of calculating the date that written submissions to the arbitrator under RCW 48.49.040 are due, final selection of the arbitrator occurs on the date that the commissioner sends by electronic transmittal the notice of selection to the arbitrator. The parties must be copied on such notice.

(2) Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.

(3) If the parties agree on an out-of-network rate for the services at issue after submitting an arbitration initiation request but before the arbitrator has made a decision, they must provide notice to the commissioner as provided in RCW 48.49.040(7).

(4) If an initiating party withdraws an arbitration initiation request at any point before the arbitrator has made a decision, the party must submit to the commissioner notice of the date of the withdrawal of the request, as soon as possible, but no later than three business days after the date of the withdrawal.

(5) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.

(6) The decision of the arbitrator is final and binding on the parties and is not subject to judicial review. The arbitrator must submit to the commissioner:

(a) Their decision, including an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision; and

(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule, or for arbitration proceedings under RCW 48.49.135, using the form found in Appendix C to this rule.

(7)(a) For the calendar year beginning January 1, 2023, arbitrators must charge a fixed fee for single claim proceedings within the range of $200-$650. If an arbitrator chooses to charge a different fixed fee for bundled claim proceedings, that fee must be within the range of $268-$800. Beginning January 1, 2024, and January 1st of each year thereafter, the arbitrator may adjust the fee range by the annual consumer price index-urban as determined annually by the United States Bureau of Labor Statistics.

(b) Expenses incurred during arbitration, including the arbitrator's expenses and fees, but not including attorneys' fees, must be divided equally among the parties to the arbitration. Arbitrator fees must be paid to the arbitrator by the parties within 30 calendar days of receipt of the arbitrator's decision by the parties.

(c) If the parties reach an agreement before the arbitrator makes their decision, the arbitrator fees must be paid by the parties within

30 calendar days of the date the settlement is reported to the commissioner as required under RCW 48.49.040.

(8) RCW 48.49.040(13) governs arbitration proceedings initiated under RCW 48.49.135. The determination of the rate to be paid to the out-of-network or nonparticipating provider must be accomplished through a single arbitration proceeding.

[]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-040 Determining whether an enrollee's health plan is subject to the requirements of the act. (1) To implement RCW ((~~48.49.030~~)) 48.49.170 carriers must make information regarding whether an enrollee's health plan is subject to the requirements of chapter 48.49 RCW or section 2799A-1 et seq. of the Public Health Service Act (42 U.S.C. Sec. 300gg-111 et seq.) and federal regulations implementing those provisions of P.L. 116-260 available to providers and facilities by:

(a) Using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Eligibility Benefit Response (271) transaction information through use of ((~~a~~)) standard message~~s~~ that ((~~is~~)) are placed in a standard location within the 271 transaction; ((~~and~~))

(b) Beginning April 1, 2021, and until December 31, 2022, using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the X12 industry standard Remark Code N830 to indicate that the claim was processed in accordance with this state's balance billing rules;

(c) Beginning January 1, 2023, using the appropriate version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the applicable X12 industry standard Remark Code to indicate whether a claim was processed in accordance with this state's balance billing rules or the federal No Surprises Act.

(2) The designated lead organization for administrative simplification in Washington state:

(a) After consultation with carriers, providers and facilities through a new or an existing workgroup or committee, must post the language of ((~~the~~)) standard message~~s~~ and ((~~the~~)) their location within the 271 transaction in which the message~~s~~ ((~~is~~)) are to be placed on its website on or before November 1, ((~~2019~~)) 2022;

(b) Must post on its website on or before December 1, 2020, instructions on compliant use of the X12 industry standard Remark Code N830 in the X12 Health Care Claim Payment and Remittance Advice (835) transaction; ((~~and~~))

(c) Must post on its website on or before December 1, 2022, instructions on compliant use of the appropriate X12 industry standard Remark code or codes as provided in subsection (1)(c) of this section; and

(d) Must post on its website on or before December 1, 2020, the information reported by carriers under WAC 284-43B-035(1).

(3) A link to the information referenced in subsection (2) of this section also must be posted on the website of the office of the insurance commissioner.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-040, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-040, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-050 Notice of consumer rights and transparency. (1) The commissioner shall develop a standard template for a notice of consumer ((~~rights~~)) protections from balance billing under the Balance Billing Protection Act and the federal No Surprises Act (P.L. 116-260). The notice may be modified periodically, as determined necessary by the commissioner. The notice template will be posted on the public website of the office of the insurance commissioner.

(2) The standard template for the notice of consumer ((~~rights~~)) protections developed under ((~~the Balance Billing Protection Act~~)) subsection (1) of this section must be provided to consumers enrolled in any health plan issued in Washington state as follows:

(a) Carriers must:

(i) Include the notice in the carrier's communication to an enrollee, in electronic or any other format, that authorizes nonemergency ((~~surgical or ancillary services at an in-network facility~~)) services to be provided at facilities referenced in WAC 284-43B-010 (2)(h)(ii);

(ii) Include the notice in each explanation of benefits sent to an enrollee for items or services with respect to which the requirements of RCW 48.49.020 and WAC 284-43B-020 apply;

(iii) Post the notice on their website in a prominent and relevant location, such as in a location that addresses coverage of emergency services and prior authorization requirements for nonemergency ((~~surgical or ancillary services performed at in-network~~)) health care services performed by nonparticipating providers at certain participating facilities; and

((~~(iii)~~)) (iv) Provide the notice to any enrollee upon request.

(b) Health care facilities and providers must:

(i) For any facility or provider that is owned and operated independently from all other businesses and that has more than ((~~fifty~~)) 50 employees, upon confirming that a patient's health plan is subject to the Balance Billing Protection Act or the federal No Surprises Act (P.L. 116-260):

(A) Include the notice in any communication to a patient, in electronic or any other format related to scheduling of nonemergency ((~~surgical or ancillary services at a facility~~)) health care services performed by nonparticipating providers at certain participating facilities. Text messaging used as a reminder or follow-up after a patient has already received the full text of the notice under this subsection may provide the notice through a link to the provider's webpage that takes the patient directly to the notice. Telephone calls to patients following the patient's receipt of the full text of the notice under this subsection do not need to include the notice; and

(B) For facilities providing emergency ((~~medical~~)) services, including behavioral health emergency services providers, provide or mail the notice to a patient within ((~~seventy-two~~)) 72 hours following a patient's receipt of emergency ((~~medical~~)) services.

(ii) Post the notice on their website, if the provider, emergency behavioral health services provider or facility maintains a website, in a prominent and relevant location near the list of the carrier health plan provider networks with which the provider, behavioral health emergency services provider or facility is an in-network provider; ((~~and~~))

(iii) If services were provided at a health care facility or in connection with a visit to a health care facility, provide the notice to patients no later than the date and time on which the provider or facility requests payment from the patient, or with respect to a patient from who the provider or facility does not request payment, no later than the date on which the provider or facility submits a claim to the carrier; and

(iv) Provide the notice upon request of a patient.

(3) The notice required in this section may be provided to a patient or an enrollee electronically if it includes the full text of the notice and if the patient or enrollee has affirmatively chosen to receive such communications from the carrier, provider, or facility electronically. Except as authorized in subsection (2)(b)(i)(A) of this section, the notice may not be provided through a hyperlink in an electronic communication.

(4) For claims processed on or after July 1, 2020, when processing a claim that is subject to the balance billing prohibition in RCW 48.49.020, the carrier must indicate on any form used by the carrier to notify enrollees of the amount the carrier has paid on the claim:

(a) Whether the claim is subject to the prohibition in the act; and

(b) The federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number.

(5) Carriers must ensure that notices provided under this subsection are inclusive for those patients who may have disabilities or limited-English proficiency, consistent with carriers' obligations under WAC 284-43-5940 through 284-43-5965. To assist in meeting this language access requirement, carriers may use translated versions of the notice of consumer protections from balance billing posted on the website of the office of the insurance commissioner.

(6) A facility, behavioral health emergency services provider or health care provider meets its obligation under RCW 48.49.070 or 48.49.080, to include a listing on its website of the carrier health plan provider networks in which the facility or health care provider participates by posting this information on its website for in-force contracts, and for newly executed contracts within ((~~fourteen~~)) 14 calendar days of receipt of the fully executed contract from a carrier. If the information is posted in advance of the effective date of the contract, the date that network participation will begin must be indicated.

((~~(6)~~)) (7) Not less than ((~~thirty~~)) 30 days prior to executing a contract with a carrier((~~,~~)):

(a)(i) A hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or

provider groups that have privileges to practice at the hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility ((~~or~~));

(ii) A hospital, hospital outpatient department, critical access hospital or ambulatory surgical center must provide the carrier with a list of the nonemployed providers or provider groups that are contracted to provide ((~~surgical or ancillary services at the hospital or ambulatory surgical~~)) nonemergency health care services at the facility.

(b) The list must include the name of the provider or provider group, mailing address, federal tax identification number or numbers and contact information for the staff person responsible for the provider's or provider group's contracting. ((~~The hospital or ambulatory surgical facility~~))

(c) Any facility providing carriers information under this subsection must notify the carrier within ((~~thirty~~)) 30 days of a removal from or addition to the nonemployed provider list. ((~~A hospital or ambulatory surgical~~)) The facility also must provide an updated list of these providers within ((~~fourteen~~)) 14 calendar days of a written request for an updated list by a carrier.

((~~(7) An in-network~~)) (8) A participating provider must submit accurate information to a carrier regarding the provider's network status in a timely manner, consistent with the terms of the contract between the provider and the carrier.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-050, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-050, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-060 Enforcement. (1)(a) If the commissioner has cause to believe that any health facility, behavioral health emergency services provider or provider has engaged in a pattern of unresolved violations of RCW 48.49.020 or 48.49.030, the commissioner may submit information to the department of health or the appropriate disciplining authority for action.

(b) In determining whether there is cause to believe that a health care provider, behavioral health emergency services provider or facility has engaged in a pattern of unresolved violations, the commissioner shall consider, but is not limited to, consideration of the following:

(i) Whether there is cause to believe that the health care provider, behavioral health emergency services provider or facility has committed two or more violations of RCW 48.49.020 or 48.49.030;

(ii) Whether the health care provider, behavioral health emergency services provider or facility has failed to submit claims to carriers containing all of the elements required in WAC 284-43B-030(1) on multiple occasions, putting a consumer or consumers at risk of being billed for services to which the prohibition in RCW 48.49.020 applies;

(iii) Whether the health care provider, behavioral health emergency services provider or facility has been nonresponsive to questions or requests for information from the commissioner related to one

or more complaints alleging a violation of RCW 48.49.020 or 48.49.030; and

(iv) Whether, subsequent to correction of previous violations, additional violations have occurred.

(c) Prior to submitting information to the department of health or the appropriate disciplining authority, the commissioner may provide the health care provider, behavioral health emergency services provider or facility with an opportunity to cure the alleged violations or explain why the actions in question did not violate RCW 48.49.020 or 48.49.030.

(2) In determining whether a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner shall consider, but is not limited to, consideration of the following:

(a) Whether a carrier has failed to timely respond to arbitration initiation request notifications from providers or facilities;

(b) Whether a carrier has failed to comply with the requirements of WAC 284-43-035 related to choosing an arbitrator or arbitration entity;

(c) Whether a carrier has met its obligation to maintain current and accurate carrier contact information related to initiation of arbitration proceedings under WAC 284-43-035;

(d) Whether a carrier has complied with the requirements of WAC 284-43-040;

(e) Whether a carrier has complied with the consumer notice requirements under WAC 284-43-050; and

(f) Whether a carrier has committed two or more violations of chapter 48.49 RCW or this chapter.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-060, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-060, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-070 Self-funded group health plan opt in. (1) A self-funded group health plan that elects to participate in RCW 48.49.020 through 48.49.040 and 48.49.160, shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.49.020 through 48.49.040, 48.49.160 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it

chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least ((~~fifteen~~)) 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in balance billing protections as provided in RCW 48.49.130 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by Washington state employer has elected to participate in balance billing protections under RCW 48.49.130 and has employees that reside in other states, those employees are protected from balance billing when receiving care from a Washington state provider.

(5) Self-funded group health plan sponsors and their third party administrators may develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-070, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-070, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-085 Appendix A.

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OFFICE of the INSURANCE COMMISSIONER
WASHINGTON STATE

To be completed by OIC	OIC Tracking Number:

Balance Billing Protection Act Arbitration Initiation Request Form

Read the information on the back of the form. Submit completed form to: BBPA_Arbitration@oic.wa.gov

1. VERIFICATION: ***You must check all applicable boxes or this will be rejected.***	
	The patient's plan is regulated by the OIC or is a self-funded group health plan that has elected to participate in the BBPA *(See information on back.)* IF NOT, DO NOT SUBMIT.
	I have attached a copy of the notice of payment that shows **the date(s) of payments** and attest that the most recent date of payment was in the last 40 days. IF IT'S NOT, IT'S UNTIMELY. DO NOT SUBMIT.
	I have not attached anything that requires encryption or password protection.
	If this is a request for multiple claims, I have checked that all the claims involve the same carrier and provider/facility. IF NOT, YOU MUST SUBMIT INDIVIDUAL CLAIMS.
	The other party has been included as a courtesy copied recipient to this emailed request. Their email address has been verified and is the correct contact.

2. DATE CHECK:	
(a) Date of most recent payment – *must be within last 40 days or will be rejected.*	**(b) Date of completion of 30-day** period of good faith negotiation
(c) Date of notice to non-initiating party (notice to initiate arbitration)	**(d) Date(s) of service**. If multiple claims, note the date of service for each claim

3. FILING INFORMATION:		
If the person filing the request to initiate arbitration is filing on behalf of a provider, facility or carrier, please provide the following information: Please indicate if you are a legal representative of the filing party.		
Name(s):		
Address:	Telephone:	Email:

4. INITIATING PARTY:		
The requesting entity is a: [ ] Health care facility *If checked, provide License type: [ ] Health care provider *If checked, provide Specialty type: [ ] Carrier/Third Party Administrator		
Name(s):		
Address:	Telephone:	Email:

5. NON-INITIATING PARTY:		
The non-initiating party is a: [ ] Carrier/third-party administrator [ ] Health care [ ] provider [ ] facility		
Name:		
Address:	Telephone:	Email:

6. DESCRIPTION OF HEALTH CARE SERVICES PROVIDED (including any applicable CPT codes):
Description:

7. ADDITIONAL INFORMATION: (if multiple claims, can attach on separate sheet)
(a) Group/plan number(s):
(b) Claim number(s):
(c) Initiating party's final offer:

Please review important information on the back of this form prior to submitting this request.

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1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with health insurance plans regulated by OIC and self-funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at https://www.insurance.wa.gov/self-funded-group-health-plans to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency, surgical or ancillary services at an in-network facility may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity, OIC will choose one and notify the parties, using the process outlined in WAC 284-43B-035(5). Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. They arbitrator also can require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC.

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OFFICE of the INSURANCE COMMISSIONER WASHINGTON STATE

To be completed by OIC	OIC Tracking Number:

Balance Billing Protection Act Arbitration Initiation Request Form

Read the information on the back of the form. Submit completed form to: BBPA_Arbitration@oic.wa.gov

1. VERIFICATION: *You must check all applicable boxes or this will be rejected.*

	The patient's plan is regulated by the OIC or is a self-funded group health plan that has elected to participate in the BBPA *(See information on back.)* IF NOT, DO NOT SUBMIT.
	I have attached a copy of the notice of payment that shows **the date(s) of payments** and attest that the most recent date of payment was in the last 40 days. IF IT'S NOT, IT'S UNTIMELY. DO NOT SUBMIT.
	I have not attached anything that requires encryption or password protection.
	If this is a request for multiple claims, I have checked that all the claims involve the same carrier and provider/facility, all claims involve the same procedural code, or comparable code under a different procedural system, and all claims occur within the same 30 business day period. IF NOT, YOU MUST SUBMIT INDIVIDUAL CLAIMS.
	The other party has been included as a courtesy copied recipient to this emailed request. Their email address has been verified and is the correct contact.

2. DATE CHECK:

(a) Date of most recent payment – *must be within last 40 days or will be rejected.*	**(b) Date of completion of 30-day** period of good faith negotiation
(c) Date of notice to non-initiating party (notice to initiate arbitration)	**(d) Date(s) of service**. If multiple claims, note the date of service for each claim

3. FILING INFORMATION:

If the person filing the request to initiate arbitration is filing on behalf of a provider, facility or carrier, please provide the following information: Please indicate if you are a legal representative of the filing party.

Name(s):

Address: Telephone: Email:

4. INITIATING PARTY:

The requesting entity is a: [ ] Health care facility *If checked, provide License type:
[ ] Health care provider *If checked, provide Specialty type:
[ ] Carrier/Third Party Administrator

Name(s):

Address: Telephone: Email:

5. NON-INITIATING PARTY:

The non-initiating party is a: [ ] Carrier/third-party administrator [ ] Health care [ ] provider [ ] facility

Name:

Address: Telephone: Email:

6. DESCRIPTION OF HEALTH CARE SERVICES PROVIDED: (including any applicable CPT codes)

Description:

7. HEALTH CARE SERVICE PROVIDER INFORMATION: (if multiple claims, can attach on separate sheet):

Performing provider name:

Additional questions and important information on the back of this form, please review and complete prior to submitting this request.

7. HEALTH CARE SERVICE PROVIDER INFORMATION CONTINUED: (if multiple claims, can attach on separate sheet):
Facility where services were provided:
County where services were provided:
8. ADDITIONAL INFORMATION: (if multiple claims, can attach on separate sheet)
(a) Group/plan number(s):
(b) Claim number(s):
(c) Initiating party's final offer:

1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with (1) health insurance plans regulated by OIC; and (2) self- funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at https://www.insurance.wa.gov/self-funded-group-health-plans to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency services or nonemergency health care services at certain participating facilities (as defined in RCW 48.43.005) may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity from the list, they must notify the OIC. The OIC will then contact the parties and follow the process outlined in RCW 48.49.040 and WAC 284-43B-035. Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 calendar days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. The arbitrator may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-085, filed 11/2/20, effective 12/3/20.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-090 Appendix B.

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Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM	
ARBITRATOR'S INFORMATION	
Your name and contact Information:	
Date of your decision:	OIC Tracking Number:
DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050	
Name of carrier:	
Name of health care provider:	
Name and address of the health care provider's employer or business entity in which provider has ownership interest:	
Name and address of the health care facility where services were provided:	
Type of health care services at issue:	
The arbitrator reporting statutory provisions are noted on the back of this form.	

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RELEVANT STATUTORY PROVISIONS

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. *(Effective January 1, 2020.)*

... (3)(a) Each party must make written submissions to the arbitrator in support of its position no later than thirty calendar days after the final selection of the arbitrator. The initiating party must include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. A party that fails to make timely written submissions under this section without good cause shown shall be considered to be in default and the arbitrator shall require the party in default to pay the final offer amount submitted by the party not in default and may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default. No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner.

RCW 48.49.050

Commissioner's annual report on dispute resolution information regarding arbitration over commercially reasonable payment amounts. *(Effective January 1, 2020, until January 1, 2024.)*

(1) The commissioner must prepare an annual report summarizing the dispute resolution information provided by arbitrators under RCW 48.49.040. The report must include summary information related to the matters decided through arbitration, as well as the following information for each dispute resolved through arbitration: The name of the carrier; the name of the health care provider; the health care provider's employer or the business entity in which the provider has an ownership interest; the health care facility where the services were provided; and the type of health care services at issue.

(2) The commissioner must post the report on the office of the insurance commissioner's web site and submit the report in compliance with RCW 43.01.036 to the appropriate committees of the legislature, annually by July 1st.

(3) This section expires January 1, 2024.

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OFFICE of the INSURANCE COMMISSIONER WASHINGTON STATE

Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM

1. ARBITRATOR'S INFORMATION

Your name and contact Information:

Date of decision:	**OIC Tracking Number:**

2. DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050

(a) Name of carrier:	**(b) Name of health care provider that directly provided the service:**
(c) Name and address of the health care provider's group practice, employer or business entity in which provider has ownership interest:	**(d) Name and address of the health care facility where services were provided:**

(e) Type of health care services at issue:

(f) Which parties' final offer was chosen: ***(Report separately bundled claims)***

The arbitrator reporting statutory provision is noted on the following page.

ARBITRATOR DECISION REPORTING PROVISION

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. *(Effective March 31, 2022)*

(8)(a) No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-090, filed 11/2/20, effective 12/3/20.]

NEW SECTION

WAC 284-43B-095 Appendix C.

OFFICE of the INSURANCE COMMISSIONER WASHINGTON STATE

Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM FOR ARBITRATION PROCEEDINGS UNDER RCW 48.49.135	
1. ARBITRATOR'S INFORMATION	
Your name and contact Information:	
Date of decision:	**OIC Tracking Number:**
2. DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050 & RCW 48.49.040	
(a) Date Amended AADR was approved by OIC:	**(b) Name of carrier:**
(c) Name of facility, provider(s) or provider group(s):	**(d) Applicable counties:**
(e) Service(s) at issue:	
(f) Which party's final offer was chosen:	
The arbitrator reporting statutory provision is noted on the following page.	

ARBITRATOR DECISION REPORTING PROVISION

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. ***(Effective March 31, 2022)***

(8)(a) No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[]

NEW SECTION

WAC 284-43B-100 Appendix D.

OFFICE of the INSURANCE COMMISSIONER WASHINGTON STATE

Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

SETTLEMENT REPORTING FORM

1. INITIATING PARTY INFORMATION	
Your name and contact Information:	
Date of settlement:	**OIC Tracking Number:**
2. DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050	
(a) Name of carrier:	**(b) Name of health care provider that directly provided the service:**
(c) Name and address of the health care provider's group practice, employer or business entity in which provider has ownership interest:	**(d) Name and address of the health care facility where services were provided:**
(e) Type of health care services at issue:	
(f) Out-of-network rate for services:	
(g) Initiating party signature:	
(h) Responding party signature:	
The arbitrator reporting statutory provision is noted on the back of this form.	

SETTLEMENT REPORTING PROVISION

RCW 48.49.040

Dispute resolution process—Determination of commercially reasonable payment amount. ***(Effective March 31, 2022)***

(7) If the parties agree on an out-of-network rate for the services at issue after providing the arbitration initiation notice to the commissioner but before the arbitrator has made their decision, the amount agreed to by the parties for the service will be treated as the out-of-network rate for the service. The initiating party must send a notification to the commissioner and to the arbitrator, as soon as possible, but no later than three business days after the date of the agreement. The notification must include the out-of-network rate for the service and signatures from authorized signatories for both parties.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43B-080 Effective date.

OTS-4114.2

AMENDATORY SECTION (Amending WSR 21-01-094, filed 12/11/20, effective 1/11/21)

WAC 284-170-200 Network access—General standards. (1) An issuer must maintain each provider network for each health plan in a manner that is sufficient in numbers and types of providers and facilities to assure that, to the extent feasible based on the number and type of providers and facilities in the service area, all health plan services provided to enrollees will be accessible in a timely manner appropriate for the enrollee's condition. An issuer must demonstrate that for each health plan's defined service area, a comprehensive range of primary, specialty, institutional, and ancillary services are readily available without unreasonable delay to all enrollees and that emergency services are accessible ((~~twenty-four~~)) 24 hours per day, seven days per week without unreasonable delay.

(2) Each enrollee must have adequate choice among health care providers, including those providers which must be included in the network under WAC 284-170-270, and for qualified health plans and qualified stand-alone dental plans, under WAC 284-170-310.

(3) An issuer's service area must not be created in a manner designed to discriminate or that results in discrimination against persons because of age, gender, gender identity, sexual orientation, disability, national origin, sex, family structure, ethnicity, race, health condition, employment status, or socioeconomic status.

(4) An issuer must establish sufficiency and adequacy of choice of providers based on the number and type of providers and facilities necessary within the service area for the plan to meet the access requirements set forth in this subchapter. Where an issuer establishes medical necessity or other prior authorization procedures, the issuer must ensure sufficient qualified staff is available to provide timely prior authorization decisions on an appropriate basis, without delays detrimental to the health of enrollees.

(5) In any case where the issuer has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the issuer must ensure through referral by the primary care provider or otherwise that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost to the enrollee than if the service were obtained from network providers and facilities. An issuer must satisfy this obligation even if an alternate access delivery request has been submitted and is pending commissioner approval.

An issuer may use facilities in neighboring service areas to satisfy a network access standard if one of the following types of facilities is not in the service area, or if the issuer can provide substantial evidence of good faith efforts on its part to contract with the facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the facility. This applies to the following types of facilities:

(a) Tertiary hospitals;

(b) Pediatric community hospitals;

(c) Specialty or limited hospitals, such as burn units, rehabilitative hospitals, orthopedic hospitals, and cancer care hospitals;

(d) Neonatal intensive care units; and

(e) Facilities providing transplant services, including those that provide solid organ, bone marrow, and stem cell transplants.

(6) An issuer must establish and maintain adequate arrangements to ensure reasonable proximity of network providers and facilities to the business or personal residence of enrollees, and located so as to not result in unreasonable barriers to accessibility. Issuers must make reasonable efforts to include providers and facilities in networks in a manner that limits the amount of travel required to obtain covered benefits.

(7) A single case provider reimbursement agreement must be used only to address unique situations that typically occur out-of-network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in the network and do not support a determination of network access.

(8) An issuer must disclose to enrollees that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of the issuer. A description of the health plan's referral and authorization practices, including information about how to contact customer service for guidance, must be set forth as an introduction or preamble to the provider directory for a health plan. In the alternative, the description of referral and authorization practices may be included in the summary of benefits and explanation of coverage for the health plan.

(9) To provide adequate choice to enrollees who are American Indians/Alaska Natives, each health issuer must maintain arrangements that ensure that American Indians/Alaska Natives who are enrollees have access to covered medical and behavioral health services provided by Indian health care providers.

Issuers must ensure that such enrollees may obtain covered medical and behavioral health services from an Indian health care provider at no greater cost to the enrollee than if the service were obtained from network providers and facilities, even if the Indian health care provider is not a contracted provider. Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system. Nothing in this subsection prohibits an issuer from limiting coverage to those health services that meet issuer standards for medical necessity, care management, and claims administration or from limiting payment to that amount payable if the health service were obtained from a network provider or facility.

(10) An issuer must have a demonstrable method and contracting strategy to ensure that contracting hospitals in a plan's service area have the capacity to serve the entire enrollee population based on normal utilization.

(11) At a minimum, an issuer's provider network must adequately provide for mental health and substance use disorder treatment, including behavioral health therapy. An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal enrollee utilization patterns.

(a) Adequate networks must include crisis intervention and stabilization, psychiatric inpatient hospital services, including voluntary

psychiatric inpatient services, and services from mental health providers.

(b) There must be mental health providers of sufficient number and type to provide diagnosis and medically necessary treatment of conditions covered by the plan through providers acting within their scope of license and scope of competence established by education, training, and experience to diagnose and treat conditions found in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* or other recognized diagnostic manual or standard.

(c) An issuer must establish a reasonable standard for the number and geographic distribution of mental health providers who can treat serious mental illness of an adult and serious emotional disturbances of a child, taking into account the various types of mental health practitioners acting within the scope of their licensure.

The issuer must measure the adequacy of the mental health network against this standard at least twice a year, and submit an action plan with the commissioner if the standard is not met.

(d) Emergency mental health services and substance use disorder services, including ((~~crisis intervention and crisis stabilization~~)) services provided by behavioral health emergency services providers, as defined in RCW 48.43.005, must be included in an issuer's provider network.

(e) An issuer's monitoring of network access and adequacy must be based on its classification of mental health and substance use disorder services to either primary or specialty care, ensuring that a sufficient number of providers of the required type are in its network to provide the services as classified. An issuer may use the classifications established in WAC 284-43-7020 for this element of its network assessment and monitoring.

(f) An issuer must ensure that an enrollee can identify information about mental health services and substance use disorder treatment including benefits, providers, coverage, and other relevant information by calling a customer service representative during normal business hours, by using the issuer's transparency tool developed pursuant to RCW 48.43.007 and by referring to the network provider directory.

(12) The provider network must include preventive and wellness services, including chronic disease management and smoking cessation services as defined in RCW 48.43.005 and WAC 284-43-5640(9) and 284-43-5642(9). If these services are provided through a quit-line or help-line, the issuer must ensure that when follow-up services are medically necessary, the enrollee will have access to sufficient information to access those services within the service area. Contracts with quit-line or help-line services are subject to the same conditions and terms as other provider contracts under this section.

(13) For the essential health benefits category of ambulatory patient services, as defined in WAC 284-43-5640(1) and 284-43-5642(1), an issuer's network is adequate if:

(a) The issuer establishes a network that affords enrollee access to urgent appointments without prior authorization within ((~~forty-eight~~)) 48 hours, or with prior authorization, within ((~~ninety-six~~)) 96 hours of the referring provider's referral.

(b) For primary care providers the following must be demonstrated:

(i) The ratio of primary care providers to enrollees within the issuer's service area as a whole meets or exceeds the average ratio for Washington state for the prior plan year;

(ii) The network includes such numbers and distribution that ((~~eighty~~)) 80 percent of enrollees within the service area are within ((~~thirty~~)) 30 miles of a sufficient number of primary care providers in an urban area and within ((~~sixty~~)) 60 miles of a sufficient number of primary care providers in a rural area from either their residence or work; and

(iii) Enrollees have access to an appointment, for other than preventive services, with a primary care provider within ((~~ten~~)) 10 business days of requesting one.

(c) For specialists:

(i) The issuer documents the distribution of specialists in the network for the service area in relation to the population distribution within the service area; and

(ii) The issuer establishes that when an enrollee is referred to a specialist, the enrollee has access to an appointment with such a specialist within ((~~fifteen~~)) 15 business days for nonurgent services.

(d) For preventive care services, and periodic follow-up care including, but not limited to, standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or mental health conditions, and laboratory and radiological or imaging monitoring for recurrence of disease, the issuer permits scheduling such services in advance, consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of his or her practice.

(14) The network access requirements in this subchapter apply to stand-alone dental plans offered through the exchange or where a stand-alone dental plan is offered outside of the exchange for the purpose of providing the essential health benefit category of pediatric oral benefits. All such stand-alone dental plans must ensure that all covered services to enrollees will be accessible in a timely manner appropriate for the enrollee's conditions.

(a) An issuer of such stand-alone dental plans must demonstrate that, for the dental plan's defined service area, all services required under WAC 284-43-5700(3) and 284-43-5702(4), as appropriate, are available to all enrollees without unreasonable delay.

(b) Dental networks for pediatric oral services must be sufficient for the enrollee population in the service area based on expected utilization.

(15) Issuers must meet all requirements of this subsection for all provider networks. An alternate access delivery request under WAC 284-170-210 may be proposed only if:

(a) There are sufficient numbers and types of providers or facilities in the service area to meet the standards under this subchapter but the issuer is unable to contract with sufficient providers or facilities to meet the network standards in this subchapter; or

(b) An issuer's provider network has been previously approved under this section, and a provider or facility type subsequently becomes unavailable within a health plan's service area; or

(c) A county has a population that is ((~~fifty thousand~~)) 50,000 or fewer, and the county is the sole service area for the plan, and the issuer chooses to propose an alternative access delivery system for that county; or

(d) A qualified health plan issuer is unable to meet the standards for inclusion of essential community providers, as provided under WAC 284-170-310(3).

[Statutory Authority: RCW 48.02.060 and 48.43.765. WSR 21-01-094 (Matter No. R 2019-05), § 284-170-200, filed 12/11/20, effective 1/11/21. Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-200, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-200, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9970, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§ 156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-200, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.100, 48.46.200, 48.43.505, 48.43.510, 48.43.515, 48.43.520, 48.43.525, 48.43.530, 48.43.535. WSR 01-03-033 (Matter No. R 2000-02), § 284-43-200, filed 1/9/01, effective 7/1/01. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.030, 48.46.200. WSR 00-04-034 (Matter No. R 99-2), § 284-43-200, filed 1/24/00, effective 3/1/00. Statutory Authority: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.44.020, 48.44.050, 48.44.080, 48.46.030, 48.46.060(2), 48.46.200 and 48.46.243. WSR 98-04-005 (Matter No. R 97-3), § 284-43-200, filed 1/22/98, effective 2/22/98.]

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-170-210 Alternate access delivery request. (1) Where an issuer's network meets one or more of the criteria in WAC 284-170-200 (15)(a) through (d), the issuer may submit an alternate access delivery request for the commissioner's review and approval. The alternate access delivery request must be made using the Alternate Access Delivery Request Form C, as provided in WAC 284-170-280 (3)(d). Amended alternate access delivery requests for services subject to the Balance Billing Protection Act are governed by WAC 284-170-220 and are distinct from alternative access delivery system requests under this section.

(a) An alternate access delivery system must provide enrollees with access to medically necessary care on a reasonable basis without detriment to their health.

(b) The issuer must ensure that the enrollee obtains all covered services in the alternate access delivery system at no greater cost to the enrollee than if the service was obtained from network providers or facilities or must make other arrangements acceptable to the commissioner.

(i) Copayments and deductible requirements must apply to alternate access delivery systems at the same level they are applied to in-network services.

(ii) The alternate access delivery system may result in issuer payment of billed charges to ensure network access.

(c) An issuer must demonstrate in its alternate access delivery request a reasonable basis for not meeting a standard as part of its filing for approval of an alternate access delivery system, and include an explanation of why the alternate access delivery system pro-

vides a sufficient number or type of the provider or facility to which the standard applies to enrollees.

(d) An issuer must demonstrate a plan and practice to assist enrollees to locate providers and facilities in neighboring service areas in a manner that assures both availability and accessibility. Enrollees must be able to obtain health care services from a provider or facility within the closest reasonable proximity of the enrollee in a timely manner appropriate for the enrollee's health needs.

Alternate access delivery systems include, but are not limited to, such provider network strategies as use of out-of-state and out of county or service area providers, and exceptions to network standards based on rural locations in the service area.

(2) The commissioner will not approve an alternate access delivery system unless the issuer provides substantial evidence of good faith efforts on its part to contract with providers or facilities, and can demonstrate that there is not an available provider or facility with which the issuer can contract to meet provider network standards under WAC 284-170-200.

(a) Such evidence of good faith efforts to contract, where required, will be submitted as part of the issuer's Alternate Access Delivery Request Form C submission, as described in WAC 284-170-280 (3)(d).

(b) Evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider. Documentation of good faith efforts to contract may include, but is not limited to:

(i) Written requests to the provider to enter into contract negotiations for a new or extended contract, with the date each request was made and confirmation by the issuer that staff or a designated person that has been authorized to negotiate or sign a contract on behalf of the provider has been contacted;

(ii) Records of communications and meetings between the issuer and provider, including dates, locations and communication format;

(iii) Written contract offers made to the provider, but not substantiative contract terms offered by either the issuer or the provider, including the date each offer was made and confirmation by the issuer that the appropriate staff of the provider was contacted;

(c) Except to the extent provided otherwise in subsection (5) of this section, an alternate access delivery request for services not subject to RCW 48.49.020 may include a request to be approved for up to one health plan year, one calendar year, or until the issuer executes a provider contract to address the network access issue in the alternate access delivery request, whichever occurs earlier. An issuer that needs to submit an alternate access delivery request for the same service and geographic location as a previously approved request must submit a new alternate access delivery request for approval.

(d) For services for which balance billing is prohibited under RCW 48.49.020, the issuer must notify out-of-network or nonparticipating providers or facilities that deliver the services referenced in the alternate access delivery request within five days of submitting the request to the commissioner. Any notification provided under this subsection must include contact information for issuer staff who can provide detailed information to the affected provider or facility regarding the submitted alternate access delivery request.

(3) The effective date of an alternate access delivery system is the date that the commissioner notifies the issuer that the alternate

access delivery system has been approved. The commissioner will notify the carrier in writing that the alternate access delivery request has been approved, and will include the effective date of the approval.

(4) With respect to services for which balance billing is prohibited under RCW 48.49.020, the issuer may not treat payment to an out-of-network or nonparticipating provider or facility for a service addressed in an approved alternate access delivery request as a participating provider or as a means to satisfy network access standards in WAC 284-170-200.

(5) An approved alternate access delivery request for services subject to RCW 48.49.020 expires on December 31st of the year that the request was approved or the effective date of a contract executed by the issuer and a provider who can deliver the service in the geographic location referenced in the alternate access delivery request, whichever occurs earlier.

(6)(a) An alternate access delivery request may propose to use single case provider reimbursement agreements in limited situations if the issuer can demonstrate to the commissioner that the single case provider reimbursement agreement includes hold harmless language that complies with WAC 284-170-421 to protect the enrollee from being balanced billed.

(b) The practice of entering into a single case provider reimbursement agreement with a provider or facility in relation to a specific enrollee's condition or treatment requirements is not an alternate access delivery system ((~~for purposes of establishing~~)) and cannot be used in lieu of an alternate access delivery request to establish an adequate provider network. A single case provider reimbursement agreement must be used only to address unique situations that typically occur out of network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in a network for the whole population of enrollees under a plan, and do not support a determination of network access.

((~~(4)~~)) (7) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

[Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-210, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-210, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9971, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§ 156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-201, filed 4/25/14, effective 5/26/14.]

NEW SECTION

WAC 284-170-220 Amended alternate access delivery request for services subject to the Balance Billing Protection Act. An issuer that meets the criteria in RCW 48.49.135 (2)(b) may submit an amended alternate access delivery request to the commissioner for review and approval. The amended alternate access delivery request must be made

using the Amended Alternate Access Delivery Request Form E, as provided in WAC 284-170-280 (3)(f).

(1) An amended alternate access delivery request may be filed no sooner than three months after the effective date of the alternate access delivery request approval by the commissioner.

(2) The amended alternate access delivery request must demonstrate substantial evidence of good faith efforts by the issuer to contract between the effective date of the alternate access delivery request and the submission date of the Amended Alternate Access Delivery Request Form E.

(3) An amended alternate access delivery request must be for a specific service that is subject to RCW 48.49.020 and for a specific geographic location. Multiple services may not be combined into a singular request, for example an amended alternate access delivery request may not be for both radiology services and laboratory services. This requirement does not restrict an issuer from filing multiple amended alternate access delivery requests by service or geographic location during a plan year due to provider contract termination dates or execution of new or renewed provider contracts.

(4) The amended alternate access delivery request terminates on December 31st of the year that the request was approved or the effective date of a contract executed by the issuer and a provider who can deliver the service in the geographic location referenced in the amended alternate access delivery request, whichever occurs earlier.

(5) An issuer may not use the amended alternate access delivery request process to update a pending or approved Alternate Access Delivery Request Form C.

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AMENDATORY SECTION (Amending WSR 22-09-021, filed 4/11/22, effective 5/12/22)

WAC 284-170-280 Network reports—Format. (1) An issuer must submit its provider network materials to the commissioner for approval prior to or at the time it files a newly offered health plan.

(a) For individual and small groups, the submission must occur when the issuer submits its plan under WAC 284-43-0200. For groups other than individual and small, the submission must occur when the issuer submits a new health plan and as required in this section.

(b) The commissioner may extend the time for filing for good cause shown.

(c) For plan year 2015 only, the commissioner will permit a safe harbor standard. An issuer who can not meet the submission requirements in subsection (3)(f) and (g) of this subsection will be determined to meet the requirements of those subsections even if the submissions are incomplete, provided that the issuer:

(i) Identifies specifically each map required under subsection (3)(f)(i) of this section, or Access Plan component required under subsection (3)(g) of this section, which has not been included in whole or part;

(ii) Explains the specific reason each map or component has not been included; and

(iii) Sets forth the issuer's plan to complete the submission, including the date(s) by which each incomplete map and component will be completed and submitted.

(2) Unless indicated otherwise, the issuer's reports must be submitted electronically and completed consistent with the posted submission instructions on the commissioner's website, using the required formats.

(3) For plan years beginning January 1, 2015, an issuer must submit the following specific documents and data to the commissioner to document network access:

(a) **Provider Network Form A.** An issuer must submit a report of all participating providers by network.

(i) The Provider Network Form A must be submitted for each network being reviewed for network access. A network may be used by more than one plan.

(ii) An issuer must indicate whether a provider is an essential community provider as instructed in the commissioner's Provider Network Form A instructions.

(iii) An issuer must submit an updated, accurate Provider Network Form A on a monthly basis by the 5th of each month for each network and when a material change in the network occurs as described in subchapter B.

(iv) Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describe changes in the provider network.

(b) **Provider directory certification.** An issuer must submit at the time of each Provider Network Form A submission a certification that the provider directory posted on the issuer's website is specific to each plan, accurate as of the last date of the prior month. A certification signed by an officer of the issuer must confirm that the provider directory contains only providers and facilities with which the issuer has a signed contract that is in effect on the date of the certification.

(c) **988 Crisis Hotline Appointment Form D report.** For health plans issued or renewed on or after January 1, 2023, issuers must make next day appointments available to enrollees experiencing urgent, symptomatic behavioral health conditions to receive covered behavioral health services. Beginning on January 7, 2023, issuers must submit a report that will document their health plans' compliance with next day appointment access, including a count of enrollee appointments available for urgent, symptomatic behavioral health care services.

(i) The report is due on the dates published on the office of the insurance commissioner's website and will be set each calendar year. The office of the insurance commissioner will publish the first reporting date by December 1, 2022, and by each December 1st thereafter. The reporting time frame will be no more frequent than weekly and no less often than twice yearly.

(ii) The report must contain all data items shown in and conform to the format of the 988 Crisis Hotline Appointment Form D report prescribed by and available from the commissioner.

(iii) The report must reflect information from any sources available at the time the reporting is completed including, but not limited to:

(A) All requests the issuer has received from any source including, but not limited to, an enrollee, their provider, or a crisis call center hub;

(B) The issuer's claims data; and

(C) The behavioral health crisis call center system platform and the behavioral health integrated client referral system, once those are established and providing real-time information relevant to the coordination of behavioral health crisis response and suicide prevention services, as provided in chapter 71.24 RCW, and that information is accessible to the issuer.

(iv) For purposes of this report, urgent symptomatic behavioral health condition has the same meaning as described in RCW 48.43.790 or as established by the National Suicide Hotline Designation Act of 2020 and federal communications rules adopted July 16, 2020.

(d) **Network Enrollment Form B.** The Network Enrollment Form B report provides the commissioner with an issuer's count of total covered lives for the prior year, during each month of the year, for each health plan by county.

(i) The report must be submitted for each network as a separate report. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(ii) An issuer must submit this report by March 31st of each year.

(e) **Alternate Access Delivery Request Form C.** For plan years that begin on or after January 1, 2015, alternate access delivery requests must be submitted when an issuer's network meets one or more of the criteria in WAC 284-170-200 (15)(a) through (d). Alternate access delivery requests must be submitted to the commissioner using the Alternate Access Delivery Request Form C.

(i) The Alternate Access Delivery Request Form C submission must address the following areas, and may include other additional information as requested by the commissioner:

(A) A description of the specific issues the alternate access delivery system is intended to address, accompanied by supporting data describing how the alternate access delivery system ensures that enrollees have reasonable access to sufficient providers and facilities, by number and type, for covered services;

(B) A description and schedule of cost-sharing requirements for providers that fall under the alternate access delivery system;

(C) The issuer's proposed method of noting on its provider directory how an enrollee can access provider types under the alternate access delivery system;

(D) The issuer's marketing plan to accommodate the time period that the alternate access delivery system is in effect, and specifically describe how it impacts current and future enrollment and for what period of time;

(ii) Provider Network Form A and Network Enrollment Form B submissions are required in relation to an alternate access delivery system on the basis described in subsections (1) and (2) of this section.

(iii) If a network becomes unable to meet the network access standards after approval but prior to the health product's effective date, an alternate access delivery request must include a timeline to bring the network into full compliance with this subchapter.

(f) **Amended Alternate Access Delivery Request Form E.** For plan years that begin on or after January 1, 2022, an amended alternate access delivery request may be submitted to the commissioner when an issuer has filed and received approval for an Alternate Access Delivery Request Form C that is for services for which balance billing is prohibited under RCW 48.49.020, at least three months has passed since the effective date of that approved request, and the issuer can demon-

strate that it has made new good faith efforts to contract. Each Amended Alternate Access Delivery Request Form E must be specific to a defined service and geographic location. The report must contain all data items shown in and conform to the format of Amended Alternate Access Delivery Request Form E prescribed by and available from the commissioner.

(g) **Geographic Network Reports.**

(i) The geographic mapping criteria outlined below are minimum requirements and will be considered in conjunction with the standards set forth in WAC 284-170-200 and 284-170-310. One map for each of the following provider types must be submitted:

(A) Hospital and emergency services. Map must identify provider locations, and demonstrate that each enrollee in the service area has access within 30 minutes in an urban area and 60 minutes in a rural area from either their residence or workplace to general hospital facilities including emergency services.

(B) Primary care providers. Map must demonstrate that 80 percent of the enrollees in the service area have access within 30 miles in an urban area and 60 miles in a rural area from either their residence or workplace to a primary care provider with an open practice. The provider type selected must have a license under Title 18 RCW that includes primary care services in the scope of license.

(C) Mental health and substance use disorder providers. For general mental health providers, such as licensed psychiatrists, psychologists, social workers, and mental health nurse practitioners, the map must demonstrate that 80 percent of the enrollees in the service area have access to a mental health provider within 30 miles in an urban area and 60 miles in a rural area from either their residence or workplace. For specialty mental health providers and substance use disorder providers, the map must demonstrate that 80 percent of the enrollees have access to the following types of service provider or facility: Evaluation and treatment, voluntary and involuntary inpatient mental health and substance use disorder treatment, outpatient mental health and substance use disorder treatment, and behavioral therapy. If one of the types of specialty providers is not available as required above, the issuer must propose an alternate access delivery system to meet this requirement.

(D) Pediatric services. For general pediatric services, the map must demonstrate that 80 percent of the covered children in the service area have access to a pediatrician or other provider whose license under Title 18 RCW includes pediatric services in the scope of license. This access must be within 30 miles in an urban area and 60 miles in a rural area of their family or placement residence. For specialty pediatric services, the map must demonstrate that 80 percent of covered children in the service area have access to pediatric specialty care within 60 miles in an urban area and 90 miles in a rural area of their family or placement residence. The pediatric specialty types include, but are not limited to, nephrology, pulmonology, rheumatology, hematology-oncology, perinatal medicine, neurodevelopmental disabilities, cardiology, endocrinology, and gastroenterology.

(E) Specialty services. An issuer must provide one map for the service area for specialties found on the American Board of Medical Specialties list of approved medical specialty boards. The map must demonstrate that 80 percent of the enrollees in the service area have access to an adequate number of providers and facilities in each specialty. Subspecialties are subsumed on the map.

(F) Therapy services. An issuer must provide one map that demonstrates that 80 percent of the enrollees have access to the following types of providers within 30 miles in an urban area and 60 miles in a rural area of their residence or workplace: Chiropractor, rehabilitative service providers and habilitative service providers.

(G) Home health, hospice, vision, and dental providers. An issuer must provide one map that identifies each provider or facility to which an enrollee has access in the service area for home health care, hospice, vision, and pediatric oral coverage, including allied dental professionals, dental therapists, dentists, and orthodontists.

(H) Covered pharmacy dispensing services. An issuer must provide one map that demonstrates the geographic distribution of the pharmacy dispensing services within the service area. If a pharmacy benefit manager is used by the issuer, the issuer must establish that the specifically contracted pharmacy locations within the service area are available to enrollees through the pharmacy benefit manager.

(I) Essential community providers. An issuer must provide one map that demonstrates the geographic distribution of essential community providers, by type of provider or facility, within the service area. This requirement applies only to qualified health plans as certified in RCW 43.71.065.

(J) Behavioral health emergency services. Map must identify provider locations and demonstrate that each enrollee in the service area has access within 30 minutes in an urban area and 60 minutes in a rural area from either their residence or workplace to behavioral health emergency services.

(ii) Each report must include the provider data points on each map, title the map as to the provider type or facility type it represents, include the network identification number the map applies to, and the name of each county included on the report.

(iii) For plan years beginning January 1, 2015, and every year thereafter, an issuer must submit reports as required in subsection (1) of this section to the commissioner for review and approval, or when an alternate access delivery request is submitted.

((~~(g)~~)) (h) **Access Plan.** An issuer must establish an access plan specific to each product that describes the issuer's strategy, policies, and procedures necessary to establishing, maintaining, and administering an adequate network.

(i) At a minimum, the issuer's policies and procedures referenced in the access plan must address:

(A) Referral of enrollees out-of-network, including criteria for determining when an out-of-network referral is required or appropriate;

(B) Copayment and coinsurance determination standards for enrollees accessing care out-of-network;

(C) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of specialists and hospitals to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees;

(D) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(E) Standard hours of operation, and after-hours, for prior authorization, consumer and provider assistance, and claims adjudication;

(F) Triage and screening arrangements for prior authorization requests;

(G) Prior authorization processes that enrollees must follow, including the responsibilities and scope of use of nonlicensed staff to handle enrollee calls about prior authorization;

(H) Specific procedures and materials used to address the needs of enrollees with limited-English proficiency and literacy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(I) Assessment of the health status of the population of enrollees or prospective enrollees, including incorporation of the findings of local public health community assessments, and standardized outcome measures, and use of the assessment data and findings to develop network or networks in the service area;

(J) For gender affirming treatment:

(I) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of gender affirming treatment services to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees; and

(II) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(K) Notification to enrollees regarding personal health information privacy rights and restrictions, termination of a provider from the network, and maintaining continuity of care for enrollees when there is a material change in the provider network, insolvency of the issuer, or other cessation of operations;

(L) Issuer's process for corrective action for providers related to the provider's licensure, prior authorization, referral and access compliance. The process must include remedies to address insufficient access to appointments or services; and

(M) The process for ensuring access to next day appointments for urgent, symptomatic behavioral health conditions.

(ii) An access plan applicable to each product must be submitted with every Geographic Network Report when the issuer seeks initial certification of the network, submits its annual rate filing to the commissioner for review and approval, or when an ((~~alternative~~)) alternate access delivery request is required due to a material change in the network.

(iii) The current access plan, with all associated data sets, policies and procedures, must be made available to the commissioner upon request, and a summary of the access plan's associated procedures must be made available to the public upon request.

(4) For purposes of this section, "urban area" means:

(a) A county with a density of 90 persons per square mile; or

(b) An area within a 25 mile radius around an incorporated city with a population of more than 30,000.

[Statutory Authority: RCW 48.02.060, 48.43.515, 48.44.050, 48.46.200, 2021 c 302 and c 280. WSR 22-09-021 (Matter No. R 2021-16), § 284-170-280, filed 4/11/22, effective 5/12/22. Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-280, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-280, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9976, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§

156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-220, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 48.02.060, 48.43.510 and 48.43.515. WSR 11-07-015 (Matter No. R 2011-01), § 284-43-220, filed 3/8/11, effective 4/8/11. Statutory Authority: RCW 48.02.060. WSR 08-17-037 (Matter No. R 2008-17), § 284-43-220, filed 8/13/08, effective 9/13/08. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.43.515, 48.44.050, 48.46.030, 48.46.200, 48.42.100, 48.43.515, 48.46.030. WSR 03-09-142 (Matter No. R 2003-01), § 284-43-220, filed 4/23/03, effective 5/24/03. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.030, 48.46.200. WSR 00-04-034 (Matter No. R 99-2), § 284-43-220, filed 1/24/00, effective 1/1/01. Statutory Authority: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.44.020, 48.44.050, 48.44.080, 48.46.030, 48.46.060(2), 48.46.200 and 48.46.243. WSR 98-04-005 (Matter No. R 97-3), § 284-43-220, filed 1/22/98, effective 2/22/98.]

AMENDATORY SECTION (Amending WSR 21-01-094, filed 12/11/20, effective 1/11/21)

WAC 284-170-285 Mental health and substance use disorder web page model format and required content. (1) Not later than July 1, 2021, carriers must establish and maintain a web page entitled "Important Mental Health and Substance Use Disorder Treatment Information" that complies with the requirements in this section. By July 1, 2021, carriers must prominently post the information in subsections (4), (5), (6), (7), and (8) of this section on their website so that a member may easily locate it. By March 1, 2023, carriers must conspicuously post the information in subsection (4) of this section related to coverage of behavioral health emergency services on their website so that a member can easily locate it.

(2) A member must be able to link to the web page from their portal landing page if the carrier provides members with a portal. If the carrier does not provide members with a personal electronic portal, the carrier must place a link to the web page that is visually prominent and easily located on the health plan's network information page.

(3) A carrier's transparency tool(s) must include the information required in this section to the extent that it is required by RCW 48.43.007(2).

(4) The web page must contain a section that explains what to do if an enrollee or their dependent is experiencing a mental health or substance use disorder emergency or crisis. This section must specifically include, but is not limited to, links and information for the National Suicide Prevention hotline, a statement that the health plan will cover, without any prior authorization requirement, emergency behavioral health services provided by an emergency behavioral health services provider, as defined in RCW 48.43.005, whether the provider is a participating or nonparticipating provider, and identify additional resources for emergency or crisis intervention within an enrollee's service area and within Washington state that provide support and services for mental health or substance use disorder emergencies or crises. The content for this portion of the web page must emphasize the ways an enrollee or their personal representative can receive emergency or crisis services ((~~either~~)) covered by their health plan, from public health resources, or other private health resources ((~~or~~

~~through the services offered by the carrier~~)) in nontechnical and consumer friendly language. This section must be above the fold and visually prominent on the mental health and substance use disorder web page.

(5) The web page must contain accurate information explaining the following information, based on the health plan network's access and adequacy standards for mental health and substance use disorder treatment and services:

(a) How an enrollee can find in-network mental health and substance use disorder treatment and services in their service area;

(b) What an enrollee may do if covered services are not available in their service area or the enrollee cannot obtain access to scheduling an appointment from an in-network provider within ((~~ten~~)) 10 business days for mental health and substance use disorder services covered as primary care and ((~~fifteen~~)) 15 business days for those covered as specialty care; and

(c) A description of access to services based on the applicable time frames, such as the following: "If the enrollee seeks covered mental health and substance use disorder treatment services for which the enrollee needs a referral or is covered as specialty care, an appointment must be made available to the enrollee within ((~~fifteen~~)) 15 days of requesting one. If the requested service does not require a referral or is not specialty care, the appointment must be made available within ((~~ten~~)) 10 business days of making a request for an appointment. If an enrollee is unable to schedule an appointment within the applicable number of business days, the carrier must assist with scheduling an appointment."

(6) By June 30th of each year, the commissioner shall post a report identifying, by carrier, the number of consumer complaints, asserting an inability to access mental health or substance use disorder services within ((~~ten~~)) 10 business days for primary care and ((~~fifteen~~)) 15 business days for specialty care, that were submitted to the commissioner during the prior calendar year. A carrier's "Important Mental Health and Substance Use Disorder Treatment Information" web page must include a link to this report, and must update the link to the office of the insurance commissioner's web page on which the report is posted.

(7) If the commissioner has disciplined the carrier for violating the network standards set forth in this chapter or Title 48.43 RCW, with regard to mental health or substance use disorder treatment and services, the carrier must post a link to each order of enforcement or disciplinary action posted on the commissioner's website within ((~~thirty~~)) 30 days of the commissioner posting the order on the office of the insurance commissioner's website. An order may be removed from the carrier's website three years after the issue date of the order or completion of the corrective action plan associated with the order, whichever is later.

Carriers may indicate when a corrective action plan associated with the order is completed and carriers may include an explanation of the actions it has taken to address the enforcement or disciplinary action.

(8) The web page must contain a section titled "How to File a Complaint with the Office of the Insurance Commissioner" and refer users to the OIC complaint form at https://www.insurance.wa.gov/file-complaint-or-check-your-complaint-status.com or the commissioner's toll-free insurance consumer hotline at 1-800-562-6900.

(9) The commissioner may review the web page for accuracy and conformance with the requirements of this section when an enrollee complaint is received about access to mental health or substance use disorder services, or at any time as the commissioner deems necessary to ensure the carrier is in compliance with the requirements of this chapter.

(10) Carriers may include its logo and identifying information on the web page.

[Statutory Authority: RCW 48.02.060 and 48.43.765. WSR 21-01-094 (Matter No. R 2019-05), § 284-170-285, filed 12/11/20, effective 1/11/21.]

WSR 22-21-129
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)
[Filed October 18, 2022, 5:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-025.

Title of Rule and Other Identifying Information: WAC 246-853-650 Safe and effective analgesia and anesthesia administration in office-based settings. The board of osteopathic medicine and surgery (board) is proposing rule amendments to remain consistent with the recent Washington medical commission (WMC) updates and best practices.

Hearing Location(s): On December 2, 2022, at 9:00 a.m. The board will hold a virtual public hearing, without a physical meeting space. This promotes social distancing and the safety of the citizens of Washington state.

Register in advance for this Zoom webinar https://us02web.zoom.us/webinar/register/WN_c4Spj75mQfSTVSlOa0I9FA.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 2, 2022.

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2850, by November 23, 2022.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov, by November 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing updates to align with best practices. The proposed rule updates mirror the updates made by WMC. The amended rules would benefit the public's health by ensuring participating providers are informed and regulated by current national industry and best practice standards.

Reasons Supporting Proposal: WMC recently updated their rules regarding the provision of safe and effective analgesia and anesthesia administration in office-based surgical settings. The proposed rule amendments align the current rules with amendments made by WMC to clarify best practice expectations. These changes include clarifying definitions, exemption while performing surgery under general anesthesia, exemption for anesthesia in a dental office, criteria for approval of an accrediting entity for facilities, and required resuscitation techniques. The board works to remain consistent with WMC rules, as osteopathic physicians and allopathic physicians regularly provide similar care in the same settings. The proposed rule updates mirror the updates made by WMC.

Statutory Authority for Adoption: RCW 18.57.005 and 18.130.050.

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

Name of Proponent: Department of health, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments do not impact businesses.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Alex Sobel, DO
Chairperson

OTS-3304.3

AMENDATORY SECTION (Amending WSR 11-01-117, filed 12/17/10, effective 1/17/11)

WAC 246-853-650 Safe and effective analgesia and anesthesia administration in office-based settings. (1) Purpose. The purpose of this rule is to promote and establish consistent standards, continuing competency, and to promote patient safety. The board of osteopathic medicine and surgery establishes the following rule for physicians licensed under chapter 18.57 RCW who perform surgical procedures and use anesthesia, analgesia or sedation in office-based settings.

(2) Definitions. The ((~~following terms used~~)) definitions in this subsection apply throughout this ((~~rule~~)) section unless the ((~~text~~)) context clearly ((~~indicates~~)) requires otherwise:

(a) "Board" means the board of osteopathic medicine and surgery.

(b) "Deep sedation" or "analgesia" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(c) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway, and cardiovascular function may be impaired. Sedation that unintentionally progresses to the point at which the ((~~patent~~)) patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(d) "Local infiltration" means the process of infusing a local anesthetic agent into the skin and other tissues to allow painless wound irrigation, exploration and repair, and other procedures, including procedures such as retrobulbar or periorbital ocular blocks only when performed by a board eligible or board certified ophthalmologist. It does not include procedures in which local anesthesia is in-

jected into areas of the body other than skin or muscle where significant cardiovascular or respiratory complications may result.

(e) "Major conduction anesthesia" means the administration of a drug or combination of drugs to interrupt nerve impulses without loss of consciousness, such as epidural, caudal, or spinal anesthesia, lumbar or brachial plexus blocks, and intravenous regional anesthesia. Major conduction anesthesia does not include isolated blockade of small peripheral nerves, such as digital nerves.

(f) "Minimal sedation" ((~~or "analgesia"~~)) means a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected. Minimal sedation is limited to oral, intranasal, or intramuscular medications((~~, or both~~)).

(g) "Moderate sedation" or "analgesia" means a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

(h) "Office-based surgery" means any surgery or invasive medical procedure requiring analgesia or sedation, including, but not limited to, local infiltration for tumescent liposuction, performed in a location other than a hospital((~~,~~)) or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(i) "Physician" means an osteopathic physician licensed under chapter 18.57 RCW.

(3) Exemptions. This rule does not apply to physicians when:

(a) Performing surgery and medical procedures that require only minimal sedation (anxiolysis), or infiltration of local anesthetic around peripheral nerves. Infiltration around peripheral nerves does not include infiltration of local anesthetic agents in an amount that exceeds the manufacturer's published recommendations.

(b) Performing surgery in a hospital or hospital-associated surgical center licensed under chapter 70.41 RCW, or an ambulatory surgical facility licensed under chapter 70.230 RCW.

(c) Performing surgery ((~~using~~)) utilizing or administering general anesthesia. Facilities in which physicians administer general anesthesia or perform procedures in which general anesthesia is a planned event are regulated by rules related to a hospital((~~s~~)) or hospital-associated surgical center((~~s~~)) licensed under chapter 70.41 RCW, ((~~or~~)) an ambulatory surgical ((~~facilities~~)) facility licensed under chapter 70.230 RCW, or a dental office under WAC 246-853-655.

(d) Administering deep sedation or general anesthesia to a patient in a dental office under WAC 246-853-655.

(e) Performing oral and maxillofacial surgery, and the physician:

(i) Is licensed both as a physician under chapter 18.57 RCW and as a dentist under chapter 18.32 RCW;

(ii) Complies with dental quality assurance commission regulations;

(iii) Holds a valid:

(A) Moderate sedation permit; or

(B) Moderate sedation with parenteral agents permit; or

(C) General anesthesia and deep sedation permit; and

(iv) Practices within the scope of ((~~his or her~~)) their specialty.

(4) Application of rule. This rule applies to physicians practicing independently or in a group setting who perform office-based surgery employing one or more of the following levels of sedation or anesthesia:

(a) Moderate sedation or analgesia; or

(b) Deep sedation or analgesia; or

(c) Major conduction anesthesia.

(5) Accreditation or certification. ((~~Within three hundred sixty-five calendar days of the effective date of this rule,~~))

(a) A physician who performs a procedure under this rule must ensure that the procedure is performed in a facility that is appropriately equipped and maintained to ensure patient safety through accreditation or certification and in good standing from ((~~one of the following:~~

~~(a) The Joint Commission (JC);~~

~~(b) The Accreditation Association for Ambulatory Health Care (AAAHC);~~

~~(c) The American Association for Accreditation of Ambulatory Surgery Facilities (AAAASF);~~

~~(d) The Centers for Medicare and Medicaid Services (CMS); or~~

~~(e) Planned Parenthood Federation of America or the National Abortion Federation, for facilities limited to office-based surgery for abortion or abortion-related services.~~)) an accrediting entity approved by the board.

(b) The board may approve an accrediting entity that demonstrates to the satisfaction of the board that it has all of the following:

(i) Standards pertaining to patient care, recordkeeping, equipment, personnel, facilities and other related matters that are in accordance with acceptable and prevailing standards of care as determined by the board;

(ii) Processes that assure a fair and timely review and decision on any applications for accreditation or renewals thereof;

(iii) Processes that assure a fair and timely review and resolution of any complaints received concerning accredited or certified facilities; and

(iv) Resources sufficient to allow the accrediting entity to fulfill its duties in a timely manner.

(c) A physician may perform procedures under this rule in a facility that is not accredited or certified, provided that the facility has submitted an application for accreditation by a board-approved accrediting entity, and that the facility is appropriately equipped and maintained to ensure patient safety such that the facility meets the accreditation standards. If the facility is not accredited or certified within one year of the physician's performance of the first procedure under this rule, the physician must cease performing procedures under this rule until the facility is accredited or certified.

(d) If a facility loses its accreditation or certification and is no longer accredited or certified by at least one board-approved entity, the physician shall immediately cease performing procedures under this rule in that facility.

(6) Competency. When an anesthesiologist or certified registered nurse anesthetist is not present, the physician performing office-based surgery and using a form of sedation defined in subsection (4) of this section must be competent and qualified both to perform the operative procedure and to oversee the administration of intravenous sedation and analgesia.

(7) Qualifications for administration of sedation and analgesia may include:

(a) Completion of a continuing medical education course in conscious sedation; ((~~or~~))

(b) Relevant training in a residency training program; or

(c) Having privileges for conscious sedation granted by a hospital medical staff.

(8) ((~~Resuscitative preparedness.~~)) At least one licensed health care practitioner currently certified in advanced resuscitative techniques appropriate for the patient age group ((~~(e.g., advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or advanced pediatric life support (APLS))~~)) must be present or immediately available with age-size appropriate resuscitative equipment throughout the procedure and until the patient has met the criteria for discharge from the facility. Certification in advanced resuscitative techniques includes, but is not limited to, advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or advanced pediatric life support (APLS).

(9) Sedation((~~,~~)) assessment and management. ((~~(a)~~)) Sedation is a continuum. Depending on the patient's response to drugs, the drugs administered, and the dose and timing of drug administration, it is possible that a deeper level of sedation will be produced than initially intended.

((~~(b)~~)) (a) If an anesthesiologist or certified registered nurse anesthetist is not present, a physician intending to produce a given level of sedation should be able to "rescue" a patient((~~s~~)) who enters a deeper level of sedation than intended.

((~~(c)~~)) (b) If a patient enters into a deeper level of sedation than planned, the physician must return the patient to the lighter level of sedation as quickly as possible, while closely monitoring the patient to ensure the airway is patent, the patient is breathing, and that oxygenation, ((~~the~~)) heart rate((~~,~~)) and blood pressure are within acceptable values. A physician who returns a patient to a lighter level of sedation in accordance with this subsection ((~~(c)~~)) (9)(b) does not violate subsection (10) of this section.

(10) Separation of surgical and monitoring functions.

(a) The physician performing the surgical procedure must not administer the intravenous sedation, or monitor the patient.

(b) The licensed health care practitioner, designated by the physician to administer intravenous medications and monitor the patient who is under moderate sedation, may assist the operating physician with minor, interruptible tasks of short duration once the patient's level of sedation and vital signs have been stabilized, provided that adequate monitoring of the patient's condition is maintained. The licensed health care practitioner who administers intravenous medications and monitors a patient under deep sedation or analgesia must not perform or assist in the surgical procedure.

(11) Emergency care and transfer protocols. A physician performing office-based surgery must ensure that in the event of a complication or emergency:

(a) All office personnel are familiar with a written and documented plan to timely and safely transfer patients to an appropriate hospital.

(b) The plan must include arrangements for emergency medical services and appropriate escort of the patient to the hospital.

(12) Medical record. The physician performing office-based surgery must maintain a legible, complete, comprehensive, and accurate medical record for each patient.

(a) The medical record must include all of the following:

(i) Identity of the patient;

(ii) History and physical, diagnosis and plan;

(iii) Appropriate lab, X-ray or other diagnostic reports;

(iv) Appropriate preanesthesia evaluation;

(v) Narrative description of procedure;

(vi) Pathology reports, if relevant;

(vii) Documentation of which, if any, tissues and other specimens have been submitted for histopathologic diagnosis;

(viii) Provision for continuity of postoperative care; and

(ix) Documentation of the outcome and the follow-up plan.

(b) When moderate or deep sedation, or major conduction anesthesia is used, the patient medical record must include a separate anesthesia record that documents:

(i) The type of sedation or anesthesia used;

(ii) ((~~Drugs (name and dose)~~)) Name, dose, and time of administration of drugs;

(iii) Documentation at regular intervals of information obtained from the intraoperative and postoperative monitoring;

(iv) Fluids administered during the procedure;

(v) Patient weight;

(vi) Level of consciousness;

(vii) Estimated blood loss;

(viii) Duration of procedure; and

(ix) Any complication or unusual events related to the procedure or sedation/anesthesia.

[Statutory Authority: RCW 18.57.005 and 18.130.050. WSR 11-01-117, § 246-853-650, filed 12/17/10, effective 1/17/11.]

WSR 22-21-130
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 18, 2022, 5:49 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.

Hearing Location(s): On November 28, 2022, at 11:00 a.m. The department of health (department) is providing a virtual-only public hearing, without a physical meeting space.

Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_6xK7SaQgRCibb4KeLEpETA.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 5, 2022.

Submit Written Comments to: Nina D. Helpling, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email https://fortress.wa.gov/doh/policyreview, radruleupdates@doh.wa.gov, by November 28, 2022.

Assistance for Persons with Disabilities: Contact Nina D. Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by November 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule updates the publication date of federal rules adopted by reference under 40 C.F.R. Part 61 from 2021 to the most recently adopted 2022 version in WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. The amendment makes no changes to any requirements previously adopted, but is required for the department to receive full delegation of the Radionuclide Air Emissions Program from the United States Environmental Protection Agency (EPA).

Reasons Supporting Proposal: The intent of RCW 70A.388.040 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70A.388.050(5) is to reduce redundant licensing requirements. The rule meets the intent of the statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

Statutory Authority for Adoption: RCW 70A.388.040 and 70A.388.050(5).

Statute Being Implemented: RCW 70A.388.040 and 70A.388.050(5).

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Nina D. Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 509-946-3798.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Wash-

ington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations.

Citation and Description: EPA publishes a new version of 40 C.F.R. Part 61-National Emissions Standards for Hazardous Air Pollutants (NESHAP) each year regardless if changes were made to the regulations. This rule proposal is necessary to update the EPA referenced publication date of 40 C.F.R. Part 61 from 2021 to 2022 in WAC 246-247-035 to remain consistent between federal and state rules and as a primary condition for delegation of the NESHAP authority from EPA to the department. If Washington does not adopt the proposed changes, the department would not receive full delegation as required by EPA.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The agency did not complete a small business economic impact statement because the proposed rule only incorporates by reference the most recent version of the federal standards necessary for the department to maintain full delegation as required by EPA.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Lauren Jenks
EPH Assistant Secretary

OTS-4000.1

AMENDATORY SECTION (Amending WSR 21-22-118, filed 11/3/21, effective 12/4/21)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, ((~~2021~~)) 2022, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

[Statutory Authority: RCW 70A.388.040, 70A.388.050(5) and 2020 c 20. WSR 21-22-118, § 246-247-035, filed 11/3/21, effective 12/4/21. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 19-23-039, § 246-247-035, filed 11/12/19, effective 12/13/19. Statutory Authority: RCW 70.98.050, 70.98.080(5) and 40 C.F.R. 63.91. WSR 19-04-042, § 246-247-035, filed 1/29/19, effective 3/1/19. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 18-12-075, § 246-247-035, filed 6/1/18, effective 7/2/18; WSR 17-13-037, § 246-247-035, filed 6/13/17, effective 7/14/17. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 16-15-083, § 246-247-035, filed 7/19/16, effective 8/19/16; WSR 16-06-003, § 246-247-035, filed 2/17/16, effective 3/19/16. Statutory Authority: RCW 70.98.050 and 70.98.080(5). WSR 12-01-071, § 246-247-035, filed 12/19/11, effective 1/19/12. Statutory Authority: RCW 70.98.050. WSR 05-12-059, § 246-247-035, filed 5/26/05, effective 6/26/05.]

WSR 22-21-131
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 8:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-03-102.

Title of Rule and Other Identifying Information: WAC 308-70-130 Fees.

Hearing Location(s): On November 28, 2022, at 4:00 p.m., Zoom meeting https://dol-wa.zoom.us/j/86292774579?pwd=emtSVkx1b243Y05PcGpqakRhcUJSQT09, Meeting ID 862 9277 4579, Passcode 863929; One-tap mobile +12532158782,,86292774579#,,,,*863929# US (Tacoma), +14086380968,,86292774579#,,,,*863929# US; dial by your location +1 253 215 8782 US (Tacoma), +1 408 638 0968 US. Find your local number https://dol-wa.zoom.us/u/kl4qcIUox. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: November 29, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by November 27, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees for scrap metal businesses to continue covering the cost to administer the program as these costs have increased over the years.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering the program. Current fees are insufficient to sustain this program. The department is considering fee increases that would go into effect in January of 2023.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

October 19, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3955.2

AMENDATORY SECTION (Amending WSR 13-24-014, filed 11/21/13, effective 1/1/14)

WAC 308-70-130 Fees. The following fees shall be charged by the department of licensing:

Processor and Recycler Application, Initial	((~~$1,250.00~~)) $1,290.00
Processor and Recycler Application, Renewal	((~~$625.00~~)) $665.00
Supplier Application, Initial	((~~$350.00~~)) $390.00
Supplier Application, Renewal	((~~$175.00~~)) $205.00

[Statutory Authority: Chapter 19.290 RCW and RCW 43.24.086. WSR 13-24-014, § 308-70-130, filed 11/21/13, effective 1/1/14.]

WSR 22-21-132
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 8:24 a.m.]

Continuance of WSR 22-18-104.

Preproposal statement of inquiry was filed as WSR 22-03-102.

Title of Rule and Other Identifying Information: WAC 308-29-045 Collection agency fees.

Hearing Location(s): On November 28, 2022, at 10:00 a.m., Zoom meeting https://dol-wa.zoom.us/j/81463953820?pwd=ZDRFUDU3ZFVlc2l1REhpRmQ1ZlJldz09, Meeting ID 814 6395 3820, Passcode 382787; One-tap mobile +12532158782,,81463953820#,,,,*382787# US (Tacoma), +13462487799,,81463953820#,,,,*382787# US (Houston); dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US. Find your local number https://dol-wa.zoom.us/u/kdsRctEM0T. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: November 29, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by November 28, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 21, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees for collection agencies to continue covering the costs to administer the program, as these costs have increased over the years.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Current fees are insufficient to sustain these programs. The department is considering fee increases that would go into effect in January of 2023.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

October 18, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3951.3

AMENDATORY SECTION (Amending WSR 11-23-159, filed 11/22/11, effective 12/23/11)

WAC 308-29-045 Collection agency fees. The following fees will be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Collection agency—Main office:	
Original application	((~~$850.00~~)) $890.00
Renewal	((~~$475.00~~)) $515.00
Reregistration fee after 30 days	((~~$1,325.00~~)) $1,365.00
Branch office (with WA main office):	
Original application	((~~$550.00~~)) $590.00
Renewal	((~~$300.00~~)) $340.00
Reregistration fee after 30 days	((~~$850.00~~)) $890.00
Out-of-state collection agency—Main office:	
Original application	((~~$425.00~~)) $445.00
Renewal	((~~$237.50~~)) $257.50
Reregistration fee after 30 days	((~~$662.50~~)) $682.50
Branch office—With out-of-state main office:	
Original application	((~~$275.00~~)) $295.00
Renewal	((~~$150.00~~)) $170.00
Reregistration fee after 30 days	((~~$425.00~~)) $445.00
License print fee	$5.00

[Statutory Authority: RCW 19.16.140, 43.24.086, and 2011 1st sp.s. c 50. WSR 11-23-159, § 308-29-045, filed 11/22/11, effective 12/23/11. Statutory Authority: RCW 19.16.140, 43.24.086. WSR 04-18-043, § 308-29-045, filed 8/26/04, effective 10/1/04. Statutory Authority: [RCW 19.16.410]. WSR 01-11-132, § 308-29-045, filed 5/22/01, effective 6/22/01. Statutory Authority: RCW 43.24.086. WSR 90-06-052, § 308-29-045, filed 3/2/90, effective 4/2/90; WSR 87-10-028 (Order PM 650), § 308-29-045, filed 5/1/87. Statutory Authority: 1983 c 168 § 12. WSR 83-22-060 (Order PL 446), § 308-29-045, filed 11/2/83; WSR 83-17-031 (Order PL 442), § 308-29-045, filed 8/10/83. Formerly WAC 308-29-040.]

WSR 22-21-133
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 8:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-128.

Title of Rule and Other Identifying Information: WAC 308-13-150 What are the landscape architect fees and charges?

Hearing Location(s): On November 22, 2022, at 4:00 p.m., Zoom meeting https://dol-wa.zoom.us/j/88060762741?pwd=NlNXMDB0MitLeGMwMElo-TUsxQnJrUT09, Meeting ID 880 6076 2741, Passcode 701618; One-tap mobile +12532158782,,88060762741#,,,,*701618# US (Tacoma), +17193594580,,88060762741#,,,,*701618# US; dial by your location +1 253 215 8782 US (Tacoma), +1 719 359 4580 US, +1 312 626 6799 US. Find your local number https://dol-wa.zoom.us/u/kdpu7w7DD4. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: November 23, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by November 22, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees for landscape architects to continue covering the costs to administer the program, as these costs have increased over the years.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Current fees are insufficient to sustain this program. The department is considering fee increases that would go into effect in January of 2023.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

October 18, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3943.3

AMENDATORY SECTION (Amending WSR 12-12-034, filed 5/30/12, effective 7/1/12)

WAC 308-13-150 ((~~What are the landscape architect fees and charges?~~)) Fees. ((~~(1) Suspension of fees. Effective July 1, 2012, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:~~

~~Title of Fee~~	~~Fee~~
~~Application fee~~	~~$225.00~~
~~Renewal (2 years)~~	~~360.00~~
~~Late renewal penalty~~	~~120.00~~
~~Initial license (2 years)~~	~~360.00~~
~~Reciprocity application fee~~	~~325.00~~

~~The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, 2016.~~

~~(2)~~)) The following fees will be collected:

Title of Fee	Fee
Application fee	((~~$250.00~~)) $328.00
Renewal (2 years)	((~~450.00~~)) 590.00
Late renewal penalty	((~~150.00~~)) 197.00
((~~Duplicate~~)) License print fee	((~~25.00~~)) 5.00
Initial license (2 years)	((~~450.00~~)) 590.00
Reciprocity application fee	((~~450.00~~)) 590.00
Replacement wall certificate	20.00

You will submit any examination fees directly to CLARB.

[Statutory Authority: Chapter 18.96 RCW and RCW 43.24.086. WSR 12-12-034, § 308-13-150, filed 5/30/12, effective 7/1/12. Statutory Authority: RCW 18.96.060. WSR 10-12-116, § 308-13-150, filed 6/2/10,

effective 7/3/10. Statutory Authority: RCW 18.96.080, 18.96.090, 18.96.100, 18.96.110, 43.24.086. WSR 09-15-124, § 308-13-150, filed 7/17/09, effective 8/17/09. Statutory Authority: RCW 18.96.060. WSR 07-05-039, § 308-13-150, filed 2/15/07, effective 3/18/07. Statutory Authority: RCW 18.96.080 and 43.24.086. WSR 05-17-004, § 308-13-150, filed 8/3/05, effective 9/3/05; WSR 05-04-050, § 308-13-150, filed 1/28/05, effective 2/28/05; WSR 04-17-026, § 308-13-150, filed 8/9/04, effective 9/9/04; WSR 03-11-074, § 308-13-150, filed 5/20/03, effective 6/20/03; WSR 02-16-018, § 308-13-150, filed 7/26/02, effective 8/26/02. Statutory Authority: RCW 18.96.060 and 43.24.086. WSR 01-15-034, § 308-13-150, filed 7/12/01, effective 8/12/01; WSR 01-04-002, § 308-13-150, filed 1/25/01, effective 2/25/01; WSR 99-23-025, § 308-13-150, filed 11/9/99, effective 11/9/99. Statutory Authority: RCW 18.96.080 and 43.24.086. WSR 96-11-132, § 308-13-150, filed 5/22/96, effective 6/22/96; WSR 95-20-026, § 308-13-150, filed 9/27/95, effective 10/28/95. Statutory Authority: RCW 43.24.086. WSR 94-23-031, § 308-13-150, filed 11/8/94, effective 12/9/94. Statutory Authority: RCW 18.96.080. WSR 94-04-044, § 308-13-150, filed 1/27/94, effective 2/27/94. Statutory Authority: RCW 43.24.086 and 18.96.080. WSR 91-23-021, § 308-13-150, filed 11/8/91, effective 12/9/91; WSR 90-15-039, § 308-13-150, filed 7/13/90, effective 8/13/90. Statutory Authority: RCW 43.24.086. WSR 90-03-031, § 308-13-150, filed 1/12/90, effective 2/12/90; WSR 88-04-027 (Order PM 702), § 308-13-150, filed 1/26/88. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-13-150, filed 8/10/83. Formerly WAC 308-13-120.]

WSR 22-21-134
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed October 19, 2022, 8:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-083.

Title of Rule and Other Identifying Information: WAC 182-550-4670 CPE payment program——"Hold harmless" provision.

Hearing Location(s): On November 22, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_-9eo-_iITQK2pYK6RhvScg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than November 23, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by November 22, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email johanna.larson@hca.wa.gov, by November 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-4670(4) to include the federal portion of medicaid program supplemental payments received by hospitals.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; ESSB 5693, section 211(21), chapter 297, Laws of 2022.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Jessica Carrothers, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-2130.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The rule amendment is necessary to comply with ESSB 5693, section 211(21), chapter 297, Laws of 2022.

Scope of exemption for rule proposal:

Is fully exempt.

October 19, 2022
Wendy Barcus
Rules Coordinator

OTS-4099.1

AMENDATORY SECTION (Amending WSR 15-11-009, filed 5/7/15, effective 6/7/15)

WAC 182-550-4670 CPE payment program—"Hold harmless" provision. To meet legislative requirements, the medicaid agency includes a "hold harmless" provision for eligible hospitals participating in certified public expenditure (CPE) payment programs under WAC 182-550-4650 and 182-550-5400. Under the provision and subject to legislative directives and appropriations, hospitals eligible for payments under CPE payment programs will receive no less in combined state and federal payments than they would have received under the methodologies otherwise in effect as described in this section. All hospital submissions pertaining to CPE payment programs((~~,~~)) including, but not limited to, cost report schedules, are subject to audit at any time by the agency or its designee.

(1) The agency:

(a) Uses historical cost and payment data trended forward to calculate prospective hold harmless grant payment amounts for the current state fiscal year (SFY); and

(b) Reconciles these hold harmless grant payment amounts when the actual claims data are available for the current fiscal year.

(2) For SFYs 2006 through 2009, the agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total payments for inpatient claims for patients admitted during the fiscal year, calculated by repricing the claims using:

(i) For SFYs 2006 and 2007, the inpatient payment method in effect during SFY 2005; or

(ii) For SFYs 2008 and 2009, the payment method that would otherwise be in effect during the CPE payment program year if the CPE payment program had not been enacted.

(b) The total net disproportionate share hospital and state grant payments paid for SFY 2005.

(3) For SFY 2010 and beyond, the agency calculates what the hospital would have been paid under the methodologies otherwise in effect for the SFY as the sum of:

(a) The total of the inpatient claim payment amounts that would have been paid during the SFY had the hospital not been in the CPE payment program;

(b) One-half of the indigent assistance disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005; and

(c) All of the other disproportionate share hospital payment amounts paid to and retained by each hospital during SFY 2005 to the extent the same disproportionate share hospital programs exist in the 2009-2011 biennium.

(4) For each SFY, the agency determines total state and federal payments made under the programs, including:

(a) Inpatient claim payments;

(b) Disproportionate share hospital (DSH) payments; ((~~and~~))

(c) Supplemental upper payment limit payments, as applicable; and

(d) The federal portion of medicaid program supplemental payments received by the hospitals.

(5) A hospital may receive a hold harmless grant, subject to legislative directives and appropriations, when the following calculation results in a positive number:

(a) For SFY 2006 through SFY 2009, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (2) of this section; or

(b) For SFY 2010 and beyond, the amount derived in subsection (4) of this section is subtracted from the amount derived in subsection (3) of this section.

(6) The agency calculates interim hold harmless and final hold harmless grant amounts as follows:

(a) An interim hold harmless grant amount is calculated approximately ten months after the end of the SFY to include the paid claims for the same SFY admissions. Claims are subject to utilization review prior to the interim hold harmless calculation. Prospective grant payments made under subsection (1) of this section are deducted from the calculated interim hold harmless grant amount to determine the net grant payment amount due to or due from the hospital.

(b) The final hold harmless grant amount is calculated at such time as the final allowable federal portions of program payments are determined. The procedure is the same as the interim grant calculation, but it includes all additional claims that have been paid or adjusted since the interim hold harmless calculation. Claims are subject to utilization review and audit prior to the final calculation of the hold harmless amount. Interim grant payments determined under (a) of this subsection are deducted from this final calculation to determine the net final hold harmless amount due to or due from the hospital.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 74.09.5225(3). WSR 15-11-009, § 182-550-4670, filed 5/7/15, effective 6/7/15. WSR 11-14-075, recodified as § 182-550-4670, filed 6/30/11, effective 7/1/11. Statutory Authority: 2009 c 564 §§ 201 and 209, RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500. WSR 10-11-032, § 388-550-4670, filed 5/11/10, effective 6/11/10. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 08-20-032, § 388-550-4670, filed 9/22/08, effective 10/23/08; WSR 07-14-090, § 388-550-4670, filed 6/29/07, effective 8/1/07. Statutory Authority: RCW 74.08.090, 74.09.500, and 2005 c 518 § 209(9). WSR 06-11-100, § 388-550-4670, filed 5/17/06, effective 6/17/06.]

WSR 22-21-135
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 8:30 a.m.]

Continuance of WSR 22-18-104.

Preproposal statement of inquiry was filed as WSR 22-03-102.

Title of Rule and Other Identifying Information: WAC 308-312-060 Fees.

Hearing Location(s): On November 29, 2022, at 9:00 a.m., Zoom meeting https://dol-wa.zoom.us/j/84758419921?pwd=Nkx6TnB0U1RMOWx6VEJhSlJnZUVtdz09, Meeting ID 847 5841 9921, Passcode 732248; One-tap mobile +12532158782,,84758419921#,,,,*732248# US (Tacoma), +17193594580,,84758419921#,,,,*732248# US; dial by your location +1 253 215 8782 US (Tacoma), +1 719 359 4580 US. Find your local number https://dol-wa.zoom.us/u/kbL3ijB8qI. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: November 30, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by November 28, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees for whitewater river outfitters to continue covering the costs to administer the program, as these costs have increased over the years.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Current fees are insufficient to sustain this program. The department is considering fee increases that would go into effect in January of 2023.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:
Is fully exempt.

October 19, 2022
Ellis Starrett
Rules and Policy Manager

OTS-3959.1

AMENDATORY SECTION (Amending WSR 98-03-055, filed 1/16/98, effective 2/16/98)

WAC 308-312-060 Fees. (1) The following fees apply to the whitewater river outfitter license:

(a) New application, ((~~$25.00~~)) $35.00 per business location.

(b) Annual renewal, ((~~$25.00~~)) $35.00 per business location.

(2) New and renewal applications are charged the application handling fee listed in RCW 19.02.075.

Delinquent renewal applications may be charged the delinquency fee listed in RCW 19.02.085.

[Statutory Authority: RCW 88.12.276 and 1997 c 391 § 9. WSR 98-03-055, § 308-312-060, filed 1/16/98, effective 2/16/98.]

WSR 22-21-136
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-123.

Title of Rule and Other Identifying Information: WAC 308-12-205 Architect fees.

Hearing Location(s): On November 22, 2022, at 9:30 a.m., Zoom meeting https://dol-wa.zoom.us/j/85768256295?pwd=d3NuVjZLcXBoRWFhRTZMMi9uNjRzZz09, Meeting ID 857 6825 6295, Passcode 138011; One-tap mobile +12532158782,,85768256295#,,,,*138011# US (Tacoma), +13462487799,,85768256295#,,,,*138011# US (Houston); dial by your location +1 253 215 8782 US (Tacoma), +1 346 248 7799 US. Find your local number https://dol-wa.zoom.us/u/kbnupWxkZF. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-3846.

Date of Intended Adoption: November 23, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by November 22, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees for architects to continue covering the cost to administer the program as these costs have increased over the years.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. This program last saw an increase in fees in 2017. Current fees are insufficient to sustain these programs. The department is considering fee increases that would go into effect in January of 2023.

Statutory Authority for Adoption: RCW 43.24.086 Fee policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Julie Japhet, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1442.

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

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2022
Ellis Starrett
Rules and Policy Manager

OTS-4155.2

AMENDATORY SECTION (Amending WSR 21-01-127, filed 12/15/20, effective 1/15/21)

WAC 308-12-205 Architect fees. The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	((~~$100.00~~)) $105.00
Reciprocity application	((~~390.00~~)) 410.00
Initial licensure	((~~99.00~~)) 104.00
License renewal (2 years)	((~~99.00~~)) 109.00
Late renewal fee	((~~33.00~~)) 36.00
((~~Duplicate~~)) License print fee	((~~15.00~~)) 5.00
Business entities:	
Certificate of authorization	((~~278.00~~)) 292.00
Certificate of authorization renewal	((~~139.00~~)) 146.00

[Statutory Authority: RCW 18.08.340. WSR 21-01-127, § 308-12-205, filed 12/15/20, effective 1/15/21. Statutory Authority: RCW 18.08.340 and 43.24.086. WSR 15-15-034, § 308-12-205, filed 7/8/15, effective 8/8/15. Statutory Authority: RCW 18.220.040 and 43.24.086. WSR 13-16-018, § 308-12-205, filed 7/26/13, effective 8/26/13. Statutory Authority: RCW 18.08.340 and 43.24.086. WSR 11-11-019, amended and recodified as § 308-12-205, filed 5/9/11, effective 7/1/11. Statutory Authority: RCW 18.08.430 (1) and (2), 43.24.086 and 43.24.140. WSR 99-08-062, § 308-12-326, filed 4/2/99, effective 5/3/99. Statutory Authority: RCW 43.24.086. WSR 98-12-064, § 308-12-326, filed 6/1/98, ef-

fective 7/2/98. Statutory Authority: RCW 43.24.086. WSR 97-13-095, § 308-12-326, filed 6/18/97, effective 7/19/97. Statutory Authority: RCW 18.03.350. WSR 97-06-064, § 308-12-326, filed 2/27/97, effective 3/30/97. Statutory Authority: RCW 18.08.340 and 18.08.370. WSR 91-13-055, § 308-12-326, filed 6/14/91, effective 7/15/91. Statutory Authority: RCW 43.24.086. WSR 90-03-032, § 308-12-326, filed 1/12/90, effective 2/12/90; WSR 87-10-028 (Order PM 650), § 308-12-326, filed 5/1/87.]

WSR 22-21-140
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 9:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-105.

Title of Rule and Other Identifying Information: WAC 308-104-160 Moving and nonmoving violations defined.

Hearing Location(s): On November 22, 2022, at 1:00 p.m., Zoom meeting https://dol-wa.zoom.us/j/86374153433?pwd=WVhGNGIrYVVJVGpVdjNkSEFqTWxOZz09, Meeting ID 863 7415 3433, Passcode 382820, One-tap mobile, +12532158782,,86374153433#,,,,*382820# US (Tacoma), +16694449171,,86374153433#,,,,*382820# US; dial by your location, +1 253 215 8782 US (Tacoma), Meeting ID 863 7415 3433, Passcode 382820. Find your local number https://dol-wa.zoom.us/u/kvSFuyFaA. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having trouble accessing the public hearing Zoom link at the time of the hearing, please call 360-902-3846 immediately. You should be admitted into the meeting at the time the public hearing starts.

Date of Intended Adoption: November 23, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98501, email rulescoordinator@dol.wa.gov, by November 21, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, by November 14, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 308-104-160 Moving and nonmoving violations defined to add additional qualifying offenses.

Reasons Supporting Proposal: To comply with ESSB 5226.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and 46.20.119 Reasonable rules.

Statute Being Implemented: ESSB 5226.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carla Weaver, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-3682.

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

A cost-benefit analysis is not required under RCW 34.05.328. See exemptions below.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 19, 2022
Ellis Starrett
Rules and Policy Manager

OTS-4144.2

AMENDATORY SECTION (Amending WSR 17-21-026, filed 10/10/17, effective 11/10/17)

WAC 308-104-160 Moving and nonmoving violations defined. For purposes of RCW 46.20.2891, 46.65.020, 46.20.2892, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

(1) Criminal traffic infractions, as defined by RCW 46.63.020:

(a) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;

((~~(2)~~)) (b) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;

((~~(3)~~)) (c) Vehicular homicide, as defined by RCW 46.61.520;

((~~(4)~~)) (d) Vehicular assault, as defined by RCW 46.61.522;

((~~(5)~~)) (e) Reckless driving, as defined by RCW 46.61.500;

((~~(6)~~)) (f) Racing, as defined by RCW 46.61.530;

((~~(7) Embracing, as defined by RCW 46.61.665;~~

~~(8)~~)) (g) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;

((~~(9)~~)) (h) Attempting to elude a police vehicle, as defined by RCW 46.61.024;

((~~(10)~~)) (i) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342((~~,~~)) or 46.20.345((~~, or 46.20.394~~));

((~~(11)~~)) (j) Reckless endangerment of roadway workers, as defined in RCW 46.61.527(4);

((~~(12)~~)) (k) Driver under ((~~twenty-one~~)) 21 driving or being in physical control of a motor vehicle after consuming alcohol or marijuana, as defined in RCW 46.61.503;

((~~(13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;~~

~~(14) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;~~

~~(15) Negligent driving in the first degree, as defined by RCW 46.61.5249;~~

~~(16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;~~

~~(17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;~~

~~(18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;~~

~~(19)~~)) (l) Negligent driving in the first degree, as defined by RCW 46.61.5249;

(m) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;

(n) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, ((~~46.61.021,~~)) or 46.61.022;

((~~(20) Disobey school patrol, as defined by RCW 46.61.385;~~

~~(21) Speed too fast for conditions, as defined by RCW 46.61.400;~~

~~(22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;~~

~~(23) Speeding in a school zone, as defined by RCW 46.61.440;~~

~~(24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;~~

~~(25)~~)) (o) Failure to yield right of way, as defined by RCW ((~~46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;~~

~~(26)~~)) 46.61.212(4);

(p) Violation of license restriction(s), as defined by RCW 46.20.740;

(q) Spilling load, as defined by RCW 46.61.655 (7)(a) and (b);

(2) Violation of traffic infraction, as defined in RCW 46.63.020:

(a) Embracing, as defined by RCW 46.61.665;

(b) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.394;

(c) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;

(d) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;

(e) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;

(f) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;

(g) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.021;

(h) Disobey school patrol, as defined by RCW 46.61.385;

(i) Speed too fast for conditions, as defined by RCW 46.61.400;

(j) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;

(k) Speeding in a school zone, as defined by RCW 46.61.440;

(l) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;

(m) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(n) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;

((~~(27)~~)) (o) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;

((~~(28)~~)) (p) Improper lane change or travel, as defined by RCW 46.61.140;

((~~(29)~~)) (q) Straddling or driving over centerline, as defined by RCW 46.61.140;

((~~(30)~~)) (r) Driving on the wrong side of the road, as defined by RCW 46.61.150;

((~~(31)~~)) (s) Crossing divider, as defined by RCW 46.61.150;

((~~(32)~~)) (t) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;

((~~(33)~~)) (u) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;

((~~(34)~~)) (v) High occupancy vehicle lane violation, as defined by RCW 46.61.165;

((~~(35)~~)) (w) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;

((~~(36)~~)) (x) Passing stopped school bus, as defined by RCW 46.61.370;

((~~(37)~~)) (y) Passing stopped private carrier bus, as defined by RCW 46.61.375;

((~~(38)~~)) (z) Following too closely, as defined by RCW 46.61.145;

((~~(39)~~)) (aa) Following fire apparatus, as defined by RCW 46.61.635;

((~~(40)~~)) (bb) Crossing fire hose, as defined by RCW 46.61.640;

((~~(41)~~)) (cc) Driving on sidewalk, as defined by RCW 46.61.606;

((~~(42)~~)) (dd) Driving through safety zone, as defined by RCW 46.61.260;

((~~(43)~~)) (ee) Driving with wheels off roadway, as defined by RCW 46.61.670;

((~~(44)~~)) (ff) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;

((~~(45)~~)) (gg) Improper turn, as defined by RCW 46.61.290;

((~~(46)~~)) (hh) Prohibited turn, as defined by RCW 46.61.295;

((~~(47)~~)) (ii) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;

((~~(48)~~)) (jj) Improper backing, as defined by RCW 46.61.605;

((~~(49)~~)) (kk) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;

((~~(50)~~)) (ll) Reckless endangerment, as defined by RCW 9A.36.050;

((~~(51)~~)) (mm) Failure to maintain control, as defined by RCW 46.61.445;

((~~(52)~~)) (nn) Violation of license restriction(s), as defined by RCW 46.20.041 ((~~or 46.20.740~~));

((~~(53)~~)) (oo) Violation of instruction permit restrictions, as defined by RCW 46.20.055;

((~~(54)~~)) (pp) Violation of out-of-service order, as defined by RCW 46.25.090;

((~~(55)~~)) (qq) Obstructed vision or control, as defined by RCW 46.61.615;

((~~(56)~~)) (rr) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;

((~~(57)~~)) (ss) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;

((~~(58)~~)) (tt) Coasting on downgrade, as defined by RCW 46.61.630;

((~~(59)~~)) (uu) Violation of child restraint requirements, as defined by RCW 46.61.687;

((~~(60)~~)) (vv) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;

((~~(61)~~)) (ww) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;

((~~(62)~~)) (xx) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;

((~~(63)~~)) (yy) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;

((~~(64)~~)) (zz) Driving without lights, as defined by RCW 46.37.020;

((~~(65)~~)) (aaa) Failure to dim lights, as defined by RCW 46.37.230;

((~~(66)~~)) (bbb) Operating motorcycle without lights, as defined by RCW 46.37.522;

((~~(67)~~)) (ccc) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;

((~~(68)~~)) (ddd) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;

((~~(69)~~)) (eee) Failure to secure load, as defined by RCW 46.37.490;

((~~(70)~~)) (fff) Spilling load, as defined by RCW 46.61.655;

((~~(71)~~)) (ggg) Improper towing, as defined by RCW 46.44.070;

((~~(72)~~)) (hhh) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;

(iii) Using a personal electronic device while driving, as defined by RCW 46.61.672;

((~~(73)~~)) (jjj) Dangerously distracted driving, as defined by RCW 46.61.673;

((~~(74)~~)) (kkk) Using a hand-held mobile telephone while driving, as defined by RCW 46.61.667 (1)(b) (repealed by 2017 c 334 § 2); and

((~~(75)~~)) (lll) Texting while driving a commercial motor vehicle, as defined by RCW 46.61.668 (1)(b) (repealed by 2017 c 334 § 2).

[Statutory Authority: RCW 46.01.110, 46.20.2891, 46.82.290, and 46.90.010. WSR 17-21-026, § 308-104-160, filed 10/10/17, effective 11/10/17. Statutory Authority: RCW 46.01.110 and 46.20.2891. WSR 16-16-101, § 308-104-160, filed 8/2/16, effective 9/2/16. Statutory Authority: RCW 46.01.110, 46.20.2891, 46.20.291, and 46.65.020. WSR 14-04-014, § 308-104-160, filed 1/24/14, effective 2/24/14; WSR 13-04-059, § 308-104-160, filed 2/1/13, effective 3/4/13. Statutory Authority: RCW 46.01.110. WSR 00-18-070, § 308-104-160, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 46.10.110. WSR 92-08-045, § 308-104-160, filed 3/25/92, effective 4/25/92. Statutory Authority: RCW 46.20.391, 46.01.100 and 46.65.020. WSR 86-07-018 (Order DS 2), § 308-104-160, filed 3/12/86. Statutory Authority: RCW 46.01.110. WSR 82-21-002 (Order 697-DOL), § 308-104-160, filed 10/7/82; WSR 82-03-046 (Order 668 DOL), § 308-104-160, filed 1/19/82.]

WSR 22-21-141
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 19, 2022, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-104.

Title of Rule and Other Identifying Information: WAC 308-104-025 Effect of accumulation of traffic offenses. New WAC 308-104-026 Safe driving course and 308-104-027 Effect of accumulation of traffic infractions.

Hearing Location(s): On November 28, 2022, at 3:00 p.m., Zoom meeting https://dol-wa.zoom.us/j/81874782797?pwd=ZzQ5dFpWMU1PS3NrM3JKVTJ5bE5vQT09, Meeting ID 818 7478 2797, Passcode 279420; One-tap mobile +12532158782,,81874782797#,,,,*279420# US (Tacoma), +16699006833,,81874782797#,,,,*279420# US (San Jose); dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 818 7478 2797, Passcode 279420. Find your local number https://dol-wa.zoom.us/u/kc7eXljrQf. Persons wishing to attend in person can come to the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98501. If you are having trouble accessing the public hearing Zoom link at the time of the hearing, please call 360-902-3846 immediately. You should be admitted into the meeting at the time the public hearing starts.

Date of Intended Adoption: November 29, 2022.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98501, email rulescoordinator@dol.wa.gov, by November 27, 2022.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, by November 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Makes changes in chapter 308-104 WAC to adopt requirements in ESSB 5226 related to an accumulation of traffic offenses and the safe driving course.

Reasons Supporting Proposal: The department is making changes to chapter 308-104 WAC to adopt new requirements established in ESSB 5226 related to suspensions resulting from an accumulation of traffic offenses and a required safe driving course. The law decreases the number of accumulated traffic offenses that result in a license suspension and requires individuals who are suspended under this law to complete a safe driving course. Section 7 of the bill states: "Whenever the official records of the department show that a person has committed a traffic infraction for a moving violation on three or more occasions within a one-year period, or on four or more occasions within a two-year period, the department must suspend the license of the driver for a period of 60 days and establish a period of probation for one calendar year to begin when the suspension ends. Prior to reinstatement of a license, the person must complete a safe driving course as recommended by the department."

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority and RCW 46.20.119 Reasonable rules.

Statute Being Implemented: ESSB 5226.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carla Weaver, 1125 Washington Street S.E., Olympia, WA 98501, 360-902-3682.

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

A cost-benefit analysis is not required under RCW 34.05.328. See exemptions below.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 19, 2022
Ellis Starrett
Rules and Policy Manager

OTS-4134.3

AMENDATORY SECTION (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

WAC 308-104-025 Effect of accumulation of traffic offenses. (1) For the purposes of RCW 46.20.291(3), whenever the official records of the department show that a person has committed four or more traffic offenses within a one-year period, or five or more traffic offenses within a two-year period, the department may provide notice to the driver warning them of the risk of crash involvement and the possible consequences of further action against the person's license under this section or chapter 46.65 RCW.

(2) Whenever the official records of the department show that a person has committed six or more traffic offenses within a one-year period, or seven or more traffic offenses within a two-year period, the department must issue a notice of suspension denying the person's driving privilege for ((~~sixty~~)) 60 days and establishing a ((~~three hundred sixty-five~~)) 365 day period of probation to begin when the period of suspension ends. During the period of probation, a person must not be convicted of an additional traffic offense.

(3) At a hearing requested by the driver to contest the notice of suspension, the accumulation of violations in subsection (2) of this section shall be considered prima facie evidence of violations of such frequency as to indicate a disrespect for traffic laws or a disregard for the safety of other persons on the highways.

(4) If a person is convicted of a traffic offense during the period of ((~~suspension or~~)) probation, the department must impose an additional ((~~thirty-day~~)) 30-day suspension to run consecutively with any suspension already being served under this section ((~~and the period of probation must be extended for three hundred sixty-five days from the date the additional suspension period ends. A person shall have the opportunity to contest the additional period of suspension under the procedure authorized by RCW 46.20.245~~)).

(5) For purposes of this section "traffic offense" means a conviction as defined in RCW 46.20.270(3), or a finding that a traffic infraction has been committed as defined in RCW 46.20.270(5), of a

moving violation as defined in WAC 308-104-160. A traffic offense committed under the provisions of chapter 46.37 RCW by a commercial driver with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes.

[Statutory Authority: RCW 46.01.110. WSR 18-11-098, § 308-104-025, filed 5/21/18, effective 9/4/18; WSR 00-18-069, § 308-104-025, filed 9/1/00, effective 10/2/00. Statutory Authority: RCW 46.01.110 and 1989 c 178 §§ 3, 5, 8 and 16. WSR 89-18-003, § 308-104-025, filed 8/24/89, effective 9/24/89. Statutory Authority: RCW 46.01.110. WSR 82-03-046 (Order 668 DOL), § 308-104-025, filed 1/19/82.]

NEW SECTION

WAC 308-104-026 Safe driving course. (1) The department recommends safe driving courses so that a driver can learn how to:

(a) Correct and rehabilitate driving performance;

(b) Learn safe, responsible, and respectful driving behaviors; and

(c) Avoid danger potentials, risks to drivers, and other road users.

(2) To receive a recommendation for a safe driving course, an entity or individual offering a safe driving course must apply on a form prescribed by the department and include copies of course materials.

(3) The department considers the following factors when determining whether to recommend a course:

(a) A need exists for a course in the geographic location the course will be offered, or a need exists to provide options to problem drivers.

(b) The entity or individual offering the course is doing so as a part of a larger driver improvement or education program that has demonstrated success in correcting driving performance and behaviors.

(c) The safe driving course educates and assesses student comprehension about the following driving behaviors:

(i) Dangers associated with impaired driving including prescription and over-the-counter drugs, as well as other illicit substances;

(ii) Dangers of driving at excessive speeds;

(iii) Dangers of right-of-way violations including merging, improper turns, roundabouts, and intersections;

(iv) Dangers of distracted driving;

(v) Dangers of improper passing and following vehicles too closely;

(vi) Dangers of aggressive driving;

(vii) Dangers of fatigued driving;

(viii) Passenger safety to include child restraints and seatbelt use;

(ix) Operating around vulnerable road users; and

(x) Hazard awareness: Maintenance and emergency, school zones, constructions zones, and weather conditions.

(4) The department may recommend a course that is substantially like the course described in subsection (3) of this section and the course is recommended or approved by another governmental entity.

[]

NEW SECTION

WAC 308-104-027 Effect of accumulation of traffic infractions. (1) The department shall send the driver a notice of suspension listing the qualifying occasions when the records of the department indicate that a person qualifies for a suspension under RCW 46.20.2892.

(2) The exclusive remedy for contesting a notice of suspension is the administrative review described in RCW 46.20.245.

(3) When a driver seeks an administrative review on the limited issue of whether information reported to the department accurately describes the action taken by the court, the department may consider as a part of that review:

(a) Whether each individual traffic infraction reported to the department accurately describes the action taken by a court;

(b) Whether multiple traffic infractions reported by a court should be counted as one occasion.

(4) When the department receives notice that a person has committed an additional traffic infraction during the period of probation, the department shall issue a notice of probation violation informing the person of a 30-day suspension as required by RCW 46.20.2892. The 30-day suspension shall run consecutively with any suspension already being served but consecutively with any other suspension or revocation a person is serving under a separate provision of law. The exclusive remedy for contesting a notice of probation violation is the administrative review procedure described in RCW 46.20.245.

(5) For the purposes of RCW 46.20.2892, a traffic infraction shall have the same meaning as RCW 46.63.020. To determine whether a traffic infraction is a moving violation, the department shall use the definition provided by WAC 308-104-160.

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