

WSR 23-07-092
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed March 17, 2023, 7:11 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040.

Title of Rule and Other Identifying Information: Amend Spokane Regional Clean Air Agency (SRCAA) Regulation I, Articles I, II, III, IV, V, VI, VIII, and X.

Hearing Location(s): On Thursday, June 1, 2023, at 9:30 a.m., in person at 1610 South Technology Boulevard, #101, Spokane, WA 99224; or online, Zoom URL link provided on board meeting agenda. Comment period from May 1 through June 1, 2023, ends at close of public hearing.

Date of Intended Adoption: June 1, 2023.

Submit Written Comments to: Margee Chambers, 1610 South Technology Boulevard, #101, Spokane, WA 99224, email PublicComment@spokanecleanair.org, fax 509-477-6828, by June 1, 2023, close of hearing; submit comments by May 23, 2023, to be included in board packet.

Assistance for Persons with Disabilities: Contact Mary Kataoka, phone 509-477-4727 ext. #100, fax 509-477-6828, email mkataoka@spokanecleanair.org, by May 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2020 legislative change to Title 70 RCW renumbered the Washington Clean Air Act from chapter 70.94 RCW to chapter 70A.15 RCW. SRCAA is amending Regulation I to update the RCW citing as well as to correct typographical errors; provide clarification; align the wood heating exemption to RCW 70A.15.3580; separate late fee from penalty fee; update formatting in Article III and VIII; and update adoption by reference. The amendments will not change fees or add new requirements for businesses or residents to meet.

Reasons Supporting Proposal: The proposed amendments are necessary to support the agency's implementation of the Washington Clean Air Act. The amendments will allow the agency to meet the state legislature's deadline for agencies to update the RCW citing in agency regulations. The amendments' anticipated effects include improved readability, accurate citing, and alignment of SRCAA's local regulations to state rules and regulations.

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

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 509-477-4727; Implementation: April Westby, SRCAA, 509-477-4727; and Enforcement: Lori Rodriguez, SRCAA, 509-477-4727.

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 under RCW 34.05.328 does not apply to local air pollution control agencies per RCW 70A.15.2040.

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.

Explanation of exemptions: Chapter 19.85 RCW applies to state agencies. Under RCW 70A.15.2040, local air pollution control agencies are not state agencies. SRCAA is a local air pollution control agency.

Scope of exemption for rule proposal:
Is fully exempt.

March 16, 2023
Margee Chambers
SIP Planner/Rule Writer

**SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA)
AMENDMENTS TO SRCAA REGULATION I, ARTICLES I, II, III, IV, V, VI,
VIII, and X**

AMENDATORY SECTION

SECTION 1.01 POLICY

(A) Agency and Jurisdiction. The Agency, whose jurisdiction is coextensive with the boundaries of Spokane County, having been activated pursuant to the Washington Clean Air Act (WCAA), Chapter ((70.94)) 70A.15 RCW as amended, shall be known and cited as "Spokane Regional Clean Air Agency," and hereinafter may be cited as "SRCAA", or the "Agency". The Agency adopts the following Regulation I to control the emissions of air contaminants from all stationary sources within the jurisdiction of the Agency; to provide for the uniform administration and enforcement of the Agency's Regulation I; and to carry out the requirements and purposes of the WCAA.

(B) Public Policy.

(1) It is hereby declared that the Agency adopts public policy per RCW 70A.15.1005 (~~to be the public policy of the Agency~~) to secure and maintain such levels of air quality that protect human health and safety, including the health and safety of the most sensitive members of the population, to comply with the requirements of the Federal Clean Air Act (FCAA), to prevent injury to plant and animal life and to property, to foster the comfort and convenience of its inhabitants, to promote the economic and social development of the County, and to facilitate the enjoyment of the natural attractions of the County.

(2) It is further the intent of Regulation I to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

(C) Applicability.

(1) Wherever the Agency's Regulation I constitutes a restatement of the requirements and purposes of Chapter ((70.94)) 70A.15 RCW, it is the intent of the Agency that the Regulation be interpreted in the same manner as the statute adopted by the Legislature. Any language deviation from the statute, except where the statute allows an Agency to be more stringent, is intended for purposes of clarity. As provided in Chapter ((70.94)) 70A.15 RCW and WAC 173-400-020(1), the provisions of Chapter 173-400 WAC apply statewide except where a local authority has adopted and implemented corresponding rules that apply only to sources subject to local jurisdiction, as provided in RCW ((70.94.141)) 70A.15.2040 and RCW ((70.94.331)) 70A.15.3000. The sections of the WAC adopted by reference are given in SRCAA Regulation I, Article II, Section 2.14.

(2) Agency regulations that have been or will be approved by the United States Environmental Protection Agency (EPA) for inclusion in

the Washington State Implementation Plan (SIP) apply for purposes of Washington's SIP, only to the following:

(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 (FCAA), relating to prevention of significant deterioration and visibility, but only for the purpose of meeting the requirements of Part C of Title I of the FCAA or to the extent those additional air contaminants are regulated in order to avoid such requirements.

AMENDATORY SECTION

SECTION 1.04 GENERAL DEFINITIONS

(A) Unless otherwise defined in an Article of Regulation I, the following definitions apply to all of SRCAA Regulation I. In Article II, Section 2.14, the Agency adopts by reference certain definitions provided in WAC 173-400-030, not otherwise specified in Section 1.04.

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

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year at which the emissions unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal stationary source operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions 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 emissions unit.

(c) For any emissions unit ((7)) which has not begun normal operations on the particular date, actual emissions shall equal the potential-to-emit of the emissions unit on that date.

(2) *Agency* means and refers to "Spokane Regional Clean Air Agency (SRCAA)."

(3) *Air Contaminant* means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance or any combination thereof.

(4) *Air Operating Permit (AOP) Source* means any facility required to have an air operating permit per Chapter 173-401 WAC.

(5) *Air Pollutant* means the same as "Air Contaminant".

(6) *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 Regulation I, 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 the use of various pesticides.

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

(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 as in 40 CFR Parts 60, 61, 62, or 63;

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

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

(9) *Alteration* means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, change in the design, operation, capacity, or process arrangement, increase in the connected loading of process or control equipment, 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* means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

(12) *Approval Order* means the same as "Order of Approval".

(13) *Attainment Area* means a geographic area, designated by the Environmental Protection Agency (EPA) at 40 CFR Part 81, as having attained the National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant.

(14) *Authority* means the same as "Agency".

(15) *Begin Actual Construction or Establishment* means, in general, initiation of physical on-site construction activities on a new stationary source, emission units, or control equipment that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(16) *Best Available Control Technology (BACT)* means an emission limitation, based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter ((70-94)) 70A.15 RCW 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, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of BACT result in emissions of any 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 (FCAA) as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(17) *Best Available Control Technology for Toxic, or Toxic Best Available Control Technology (tBACT)* means an emission limitation applied to each, or each mixture of, Toxic Air Pollutants (TAPs) identified in Chapter 173-460 WAC discharged, taking into account the potency, quantity, and toxicity of each TAP or mixture of TAPs discharged, in addition to the meaning given for Best Available Control Technology (BACT), herein.

(18) *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 which 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 source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(19) *Board* means Board of Directors of the Spokane Regional Clean Air Agency (SRCAA).

(20) *Brake Horsepower* means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(21) *Bubble* means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, under RCW (~~(70.94.155)~~) 70A.15.2240 and WAC 173-400-120.

(22) *Burn Out Oven* means any oven used to clean or remove dirt, grease, grime, paint, varnish, or any other unwanted substance or contaminant, from any object by using controlled incineration, without burning the object itself. A burn out oven is considered an incinerator under Article VI, Section 6.03.

(23) *Closure, Closed* means permanently stopping or terminating all processes that produce air contaminant emissions at a stationary source or emissions unit.

(24) *Combustion and Incineration Unit* means units using combustion for waste disposal, steam production, chemical recovery, or other process requirements; excluding outdoor burning.

(25) *Commence* as applied to construction, means that the 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 State Implementation Plan (SIP).

(26) *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.

(27) *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.

(28) *Control Equipment* means any facility, device, or apparatus, which has the primary function of regulating, reducing, or controlling emissions from a process, fuel burning or refuse burning equipment, and thus reduces the formation of, or the emission of, air contaminants into the ambient air.

(29) *Control Officer* means the Air Pollution Control Officer for the Spokane Regional Clean Air Agency (SRCAA) or authorized representative.

(30) *Criteria Pollutant* means a pollutant for which there is established a National Ambient Air Quality Standard (NAAQS) in 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter (PM₁₀ and PM_{2.5}), ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

(31) *Daylight Hours* means the hours between official sunrise and official sunset.

(32) *Director* means the same as "Control Officer".

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

(34) *Electronic Means* means email, fax, FTP site, or other electronic method approved by the Agency.

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

(36) *Emission Point* means the point at which emissions are released into the ambient air, including (~~such as~~), but not limited to; a duct, vent, stack, pipe, or other opening to the ambient air.

(37) *Emission Reduction Credit (ERC)* means a credit granted by the Agency, to a stationary source for a voluntary reduction in actual emissions per WAC 173-400-131.

(38) *Emission Standard and Emission Limitation* means a requirement established under the Federal Clean Air Act (FCAA) or Chapter ((70.94)) 70A.15 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or Chapter ((70.94)) 70A.15 RCW.

(39) *Emissions Unit* means any part of a stationary source or source which emits, or would have the potential-to-emit, any pollutant subject to rules and regulation(s) per the Federal Clean Air Act (FCAA), the Washington State Clean Air Act (WCAA), Chapter ((70.94)) 70A.15 RCW, the Washington Nuclear Energy and Radiation Act, Chapter ((70.98)) 70A.388 RCW, or the Agency. This term does not include non-road engines.

(40) *Episode* means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as given in RCW ((70.94.715)) 70A.15.6010.

(41) *Excess Emissions* means emissions of an air pollutant in excess of any applicable emission standards.

(42) *Executive Director* means the same as "Control Officer".

(43) *Facility* means the same as "Stationary Source".

(44) *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 USC 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 and subsequent amendments.

(45) *Federally Enforceable* means all limitations and conditions which are enforceable by the Environmental Protection Agency (EPA), including those requirements developed under 40 CFR Parts 60, 61, 62, and 63; requirements within the Washington State Implementation Plan (SIP), requirements within any permit established under 40 CFR 52.21 or Order of Approval under a SIP approved new source review regulation, or any voluntary limits on emissions in an Order issued under WAC 173-400-091.

(46) *Fire Protection Agency* means a city fire department, county fire department, local fire protection district, or the Washington State Department of Natural Resources (DNR).

(47) *Fuel Burning Equipment* means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of any type of fuel.

(48) *Fugitive Dust* means particulate emissions made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust. Fugitive dust is a type of fugitive emission.

(49) *Fugitive Emissions* means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(50) *Garbage* means putrescible animal or vegetable waste resulting from the handling, preparation, cooking or serving of food.

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

(52) *Hazardous Air Pollutant (HAP)* means any air pollutant listed in Section 112(b) of the Federal Clean Air Act (FCAA), 42 USC, Section 7412.

(53) *Heat Input* means the maximum actual or design fuel capacity, whichever is greater, stated in British thermal units (Btu) per hour for the stationary source and will be expressed using the higher heating value of the fuel unless otherwise specified.

(54) *Incinerator* means a furnace used primarily for the thermal destruction of waste, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(55) *In Operation, Operation, or Operating* means engaged in activity related to the primary design function of the stationary source.

(56) *Installation* means the act of 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.

(57) *Like-kind Replacement* means replacement of existing components (emission units, control equipment, etc.) with similar, equivalent, or comparable, new components (e.g. components that have the same throughput capacity, control efficiency, or utilization factor as the old component).

(58) *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. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source.

(c) 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 (NSPS).

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

(60) *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 malfunctions.

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

(62) *Materials Handling* means the handling, transporting, loading, unloading, storage, or transfer of materials with no significant chemical or physical alteration.

(63) *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, 42 USC, and with rules implementing that section.

(64) *Multiple-Chambered Incinerator* means any incinerator consisting of two (2) or more combustion chambers in series, employing adequate design parameters necessary for maximum combustion of the material to be burned.

(65) *National Ambient Air Quality Standard (NAAQS)* means an ambient air quality standard set by the Environmental Protection Agency (EPA) at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

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

(67) *National Emission Standards for Hazardous Air Pollutants (NESHAP) 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.

(68) *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 (FCAA);

(c) Restart of a stationary source after closure;

(d) Relocation of a stationary source to a new location;

(e) Like-kind replacement of existing emission unit(s) with a like-kind emission unit(s) (e.g. boilers, crushing equipment); or

(f) A portable source subject to the requirements in Article V, Section 5.08.

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

(70) *Nonattainment Area* means a geographic area designated by the Environmental Protection Agency (EPA) at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standards (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(71) *Nonroad Engine* means:

(a) Except as provided in Article I, Section 1.04 (A) (71) (b), a nonroad engine is any internal combustion engine:

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

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

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

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

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

2. The engine is regulated by a New Source Performance Standard (NSPS) promulgated under Section 111 of the FCAA; or

3. The engine otherwise included in Section 1.04 (A) (71) (a) 3. remains or will remain at a location for more than twelve (12) 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 (or engines) that replace an engine at a location and is intended to perform the same or similar function as the engine 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., at least two (2) years) and that operates at that single location approximately three (3) months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(72) *North American Industry Classification System (NAICS)* means the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(73) *Notice of Construction (NOC) application* means a written application to allow construction of a new source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

(74) *Odor* means that property of a substance, which allows its detection by the sense of smell or through the use of instruments designed for that purpose.

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

(76) *Order* means any order issued or adopted by Ecology or the Agency under Chapter ((70.94)) 70A.15 RCW, including, but not limited to RCW ((70.94.332, 70.94.152, 70.94.153, 70.94.154,)) 70A.15.2040(3), 70A.15.2210, 70A.15.2220, 70A.15.2230, and 70A.15.3010 and ~~70.94.141(3)~~, and includes, where used in the generic sense, the terms: order, corrective action order, order of approval, permit, permission to operate, compliance schedule order, consent order, order of denial, notice of violation, and regulatory order.

(77) *Order of approval* means a regulatory order issued by Ecology or the Agency to approve the Notice of Construction (NOC) Application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(78) *Outdoor Burning or Open Burning* means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(79) *Owner or Operator* means any person(s) who owns, leases, supervises, operates, or is in control of real property or a stationary or a portable source.

(80) *Ozone Depleting Substance* means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

(81) *Particulate Matter or Particulates* means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred (100) micrometers.

(82) *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 CFR or by a test method specified in the State Implementation Plan (SIP).

(83) *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 particulate matter.

(84) *Parts per Million by Weight (ppmw)* means parts of a contaminant per million parts of gas or carrier medium, by weight.

(85) *Permission to Operate* means a regulatory order issued by the Agency to approve the Portable Source Permit (PSP) Application for the operation and relocation of a proposed portable source in Spokane County.

(86) *Permitting Authority or Permitting Agency* means Ecology or the Agency with jurisdiction over the source.

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

(88) *PM_{2.5}* means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers (microns or μ [m]) 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.

(89) *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 two and one-half (2.5) micrometers (microns or μ [m]) 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 State Implementation Plan (SIP).

(90) *PM₁₀* means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (microns or μ [m]) 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.

(91) *PM₁₀ Emissions* means finely-divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal (ten) 10 micrometers (microns or μ [m]) 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 State Implementation Plan (SIP).

(92) *Pollution Control Hearings Board of Washington (PCHB)* means the body established under Chapter 43.21 RCW to adjudicate hearings pertaining to decisions and orders of the Agency.

(93) *Portable Source* means a type of stationary source that emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(94) *Portable Source Permit (PSP) Application* means a written application to allow the operation or relocation of a proposed portable source in Spokane County.

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

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

(97) *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 notice and opportunity for comment are afforded.

(98) *Refuse* means putrescible and non-putrescible solid wastes including, but not limited to, garbage, rubbish, ashes, incinerator residue, dead animals, abandoned automobiles, solid market wastes,

street cleanings, and solid commercial and industrial waste (including waste disposal in industrial salvage).

(99) *Regulatory Order* means an order issued by Ecology or the Agency that requires compliance with any applicable provisions of Chapter ((70.94)) 70A.15 RCW, or the rules and regulations adopted thereunder.

(100) *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. This includes emissions from any offsite support facility which would not be generated without the construction or operation of the major stationary source or major modification. Emissions which come directly from a mobile source such as a motor vehicle, train, or vessel are not secondary emissions.

(101) *Shutdown* means the cessation of operation of a source or portion of a source for any purpose.

(102) *Silvicultural Burning* means burning on unimproved land the Department of Natural Resources (DNR) protects under RCW ((70.94.030)) 70A.15.1030(21), ((70.94.6534)) 70A.15.5120, ((70.94.6540)) 70A.15.5150, and Chapter 76.04 RCW.

(103) *Source* means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(104) *Source Category* means all sources of the same type or classification.

(105) *Spokane Regional Clean Air Agency (SRCAA)* means the local air pollution agency empowered to enforce and implement the Federal Clean Air Act (FCAA), 42 USC 7401 et seq., the Washington Clean Air Act (WCAA), Chapter ((70.94)) 70A.15 RCW, and SRCAA Regulation I, in Spokane County, Washington State.

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

(107) *Stack Height* means the height of an emission point measured between the ground-level elevation at the base of the stack and where the emissions exit the stack.

(108) *Stage I Vapor Recovery* means the capture of all gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a transport tank into a stationary storage tank, except motor vehicle refueling.

(109) *Stage II Vapor Recovery* means the capture of gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a stationary storage tank into a motor vehicle fuel tank.

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

(111) *Standard Cubic Foot of Gas* means that amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 psia and a temperature of 68°F.

(112) *Startup* means the setting in operation of a source or portion of a source for any purpose.

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

(114) *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 nonroad engine, or nonroad vehicle, as defined in Section 216(11) of the Federal Clean Air Act (FCAA).

(115) *Synthetic Minor (SM)* means any source whose potential-to-emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(116) *Total Actual Annual Emissions* means the total of all criteria and toxic air pollutant emissions for the most recent complete year that is available to the Agency.

(117) *Total Reduced Sulfur (TRS)* means the sum of the mass of sulfur compounds, hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides, emitted and measured by Environmental Protection Agency (EPA) Method 16 in Appendix A to 40 CFR Part 60 or an approved equivalent method, and expressed as hydrogen sulfide.

(118) *Total Suspended Particulate (TSP)* means the mass of particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

(119) *Toxic Air Pollutant (TAP) or Toxic Air Contaminant* means any toxic air pollutant listed in Chapter 173-460 WAC. 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 Chapter 173-460 WAC. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(120) *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 (NAAQS) for the criteria pollutant and that is listed by the Environmental Protection Agency (EPA) at 40 CFR Part 81.

(121) *United States Environmental Protection Agency (USEPA) or (EPA)* means the federal agency empowered to enforce and implement the Federal Clean Air Act (FCAA), 42 USC 7401, et seq.

(122) *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.

(123) *Vent* means any opening through which air pollutants are exhausted into the ambient air.

(124) *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.

(125) *Volatile Organic Compound (VOC)* means the same as defined in 40 CFR 51.100 for the purposes of Regulation I.

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

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

AMENDATORY SECTION

SECTION 2.01 POWERS AND DUTIES OF THE BOARD

(A) Board Procedures and Actions. Pursuant to, and consistent with, the provisions of the Washington Clean Air Act (WCAA) Chapter ((70.94)) 70A.15 RCW, the Board shall establish such procedures and take such action as may be required to implement SRCAA Regulation I, Article I, Section 1.01. The Board may take such action as may be necessary to prevent air pollution, including control and measurement of the emission of any air contaminant from a source. The Board shall appoint a Control Officer, competent in the control of air pollution who shall, with the Board's advice and approval, enforce the provisions of all ordinances, orders, resolutions, rules, and regulations of this Agency, pertinent to the control and prevention of air pollution in Spokane County.

(B) Hearings. The Board shall have the power to hold hearings relating to any aspect of or matter in the administration of Regulation I and in connection therewith; issue subpoenas to compel the attendance of witnesses and production of evidence, administer oaths and take the testimony of any person under oath.

(C) Ordinances, Resolutions, Rules, Orders and Regulations. The Board shall have the power to adopt, amend, and repeal its own ordinances, resolutions, rules, orders, and regulations. Any adoption, amendment, or repeal of the Board's ordinances, resolutions, rules, orders, and regulations shall be made after due consideration at a public hearing held in accordance with Chapter 42.30 RCW, and shall have the same force and effect as all other of the Board's ordinances, resolutions, rules, orders, and regulations as soon as adopted by the Board. (See RCW ((70.94.141)) 70A.15.2040)

AMENDATORY SECTION

SECTION 2.03 CONFIDENTIAL OR PROPRIETARY INFORMATION

The Agency implements and enforces RCW ((70.94.205)) 70A.15.2510 - Confidentiality of records and information.

AMENDATORY SECTION

SECTION 2.04 VIOLATIONS

The Agency implements and enforces RCW ((70.94.211)) 70A.15.2520 - Enforcement actions by air authority - Notice to violators.

AMENDATORY SECTION

SECTION 2.05 ORDERS AND HEARINGS

The Agency implements and enforces RCW ((70.94.221)) 70A.15.2530 - Order final unless appealed to pollution control hearings board.

AMENDATORY SECTION

SECTION 2.08 FALSIFICATION OF STATEMENTS OR DOCUMENTS, AND TREATMENT OF DOCUMENTS

(A) False, Misleading Statements. No person shall willfully make a false or misleading statement to the Board or its ((~~their~~)) authorized representative as to any matter within the jurisdiction of the Board.

(B) Alter Documents. No person shall reproduce or alter, or cause to be reproduced or altered, any order, registration certificate, or

other paper issued by the Agency if the purpose of such reproduction or alteration is to circumvent, evade, or violate any provision of Chapter ((70.94)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

(C) Available for Review. Any order or registration certificate required to be obtained by Chapter ((70.94)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto, shall be available for review on the premises designated on the order or certificate.

(D) Notice to be Displayed. In the event the Agency requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Agency.

(E) False Statements. No person shall make any false material statement, representation, or certification in any form, notice or report required under Chapter ((70.94)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

(F) Render Inaccurate. No person shall render inaccurate any monitoring device or method required under Chapter ((70.94)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

AMENDATORY SECTION

SECTION 2.11 PENALTIES, CIVIL PENALTIES, AND ADDITIONAL MEANS FOR ENFORCEMENT

The Agency implements and enforces RCW ((70.94.430)) 70A.15.3150 - Penalties, RCW ((70.94.431)) 70A.15.3160 - Civil penalties, and RCW ((70.94.435)) 70A.15.3170 - Additional means of enforcement.

AMENDATORY SECTION

SECTION 2.12 RESTRAINING ORDERS - INJUNCTIONS

The Agency implements and enforces RCW ((70.94.425)) 70A.15.3140 - Restraining orders - Injunctions.

AMENDATORY SECTION

SECTION 2.13 FEDERAL AND STATE REGULATION REFERENCE DATE

(A) Federal Adoption by Reference. Federal rules in SRCAA Regulation I are adopted as they exist on ((January 1, 2020)) January 1, 2023.

(1) The term "Administrator" means the Administrator of EPA or the Control Officer of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports, the affected facility will submit reports to the Agency, unless otherwise instructed.

(B) State Adoption by Reference. State rules in Regulation I are adopted as they exist on ((January 1, 2020)) January 1, 2023, or as amended(~~(, unless a different date is listed in Section 2.14)~~).

AMENDATORY SECTION

SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

(A) The Agency adopts by reference the following WACs:

(1) Chapter 173-400 WAC, including sections:

020 - Applicability.

030 - Definitions.

(a) The following definitions are adopted by reference: Adverse Impact on Visibility; Alternative Emission Limit; Capacity Factor; Class I Area; Dispersion Technique; Emission Threshold; Excess Stack Height; Existing Stationary Facility; Federal Class I Area; Federal Land Manager; Fossil Fuel-fired Steam Generator; General Process Unit; Greenhouse Gases; Hog Fuel; Industrial Furnace; Mandatory Class I Federal Area; Natural Conditions; Projected Width; Reasonably Attributable; Sulfuric Acid Plant; Transient Mode of Operation; Useful Thermal Energy; Wigwam/Silo Burner; Wood-fired Boiler; and Wood Waste.

040 - General standards for maximum emissions.

(a) Exceptions. The following subsections are not adopted by reference: 040(6) and 040(8). 040(6) is replaced by Article VI, Section 6.04(C). 040(8) is replaced by Article VI, Section 6.07.

050 - Emission standards for combustion and incineration units.

(a) Exceptions. The following subsections are not adopted by reference: 050 (4) (c) (ix) and 050 (5) (c) (xi).

060 - Emission standards for general process units.

070 - Emission standards for certain source categories.

075(8) - Emission standards for perchloroethylene dry cleaners.

081 - Emission limits during startup and shutdown.

082 - Alternative emission limit that exceeds an emission standard in the SIP.

091 - Voluntary limits on emissions.

105 - Records, monitoring, and reporting.

(a) Exceptions. The following subsections are not adopted by reference: 105(3, 4, 6, and 8)

107 - Excess emissions.

108 - Excess emission reporting.

109 - Unavoidable excess emissions.

112 - Requirements for new sources in nonattainment areas - Review for compliance with regulations.

113 - New sources in attainment or unclassifiable areas - Review for compliance with regulations.

114 - Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.

116 - Increment protection.

117 - Special protection requirements for federal Class I areas.

118 - Designation of Class I, II, and III areas.

120 - Bubble rules.

131 - Issuance of emission reduction credits.

136 - Use of emission reduction credits (ERC).

151 - Retrofit requirements for visibility protection.

161 - Compliance schedules.

175 - Public information.

180 - Variance.

190 - Requirements for nonattainment areas.

200 - Creditable stack height and dispersion techniques.

205 - Adjustment for atmospheric conditions.

210 - Emission requirements of prior jurisdictions.

220 - Requirements for board members.

240 - Criminal penalties.

260 - Conflict of interest.

560 - General order of approval.

700 - Review of major stationary sources of air pollution.

710 - Definitions.

720 - Prevention of significant deterioration (PSD).

(a) Ecology and EFSEC are the EPA-approved permitting agencies for the PSD program for Washington under the SIP. The Agency enforces PSD permits.

730 - Prevention of significant deterioration application processing procedures.

740 - PSD permitting public involvement requirements.

750 - Revisions to PSD permits.

800 - Major stationary source and major modification in a nonattainment area.

810 - Major stationary source and major modification definitions.

(a) Exceptions. The following definition is not adopted by reference: (13) lowest achievable emission rate.

820 - Determining if a new stationary source or modification to a stationary source is subject to these requirements.

830 - Permitting requirements.

840 - Emission offset requirements.

850 - Actual emissions plant wide applicability limitation (PAL).

860 - Public involvement procedures.

(2) Chapter 173-401 WAC - Operating permit regulation.

(3) Chapter 173-425 WAC - Outdoor burning.

(4) Chapter 173-430 WAC - Agricultural burning.

(5) Chapter 173-433 WAC - Solid fuel burning devices.

(6) Chapter 173-434 WAC - Solid waste incinerator facilities.

(7) Chapter 173-435 WAC - Emergency episode plan.

(8) Chapter 173-460 WAC - Controls for new sources of toxic air pollutants.

(9) Chapter 173-476 WAC - Ambient air quality standards.

(10) Chapter 173-490 WAC - Emission standards and controls for sources emitting volatile organic compounds (VOC).

(11) Chapter 173-491 WAC - Emission standards and controls for sources emitting gasoline vapors.

(12) Chapter 197-11 WAC - SEPA Rules

NEW SECTION

SECTION 2.20 40 CFR PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

(A) The Agency adopts by reference these subparts of 40 CFR Part 62, in effect on the date referenced in Section 2.13.

(1) Subpart 000, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

AMENDATORY SECTION

SECTION 3.01 VARIANCES - APPLICATION FOR - CONSIDERATIONS - LIMITATIONS - RENEWALS - REVIEW

~~((A-))~~ (A) Applicability (RCW ~~((70.94.181))~~ 70A.15.2310). Any person, or group of persons, who is directly impacted by ~~((any))~~ SRCAA ~~((rule or regulation))~~ Regulation I, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed one year.

~~((B-))~~ (B) General Process. The Board may grant a variance from ~~((to))~~ SRCAA Regulation I. However, if the variance sought also re-

quires a variance from state rules, Ecology must first issue its approval of the variance in writing.

~~(1.)~~ (1) If the variance pertains to ((a)) SRCAA (~~(regulation)~~) Regulation I only, the applicant must submit the variance application to SRCAA and the decision to approve or deny the variance will be made by the Board.

~~(2.)~~ (2) If the variance pertains to ((a)) SRCAA (~~(regulation)~~) Regulation I and a state rule, the applicant must submit the variance application concurrently to both SRCAA and Ecology. If approved by Ecology, the variance application may then be reviewed and processed by SRCAA with the decision to approve or deny the variance being made by the Board. Approval of such a variance is contingent upon approval by both Ecology and SRCAA. If denied by Ecology, SRCAA will not make a determination on (~~(review)~~) the variance request.

~~(a.)~~ (a) Per 40 CFR 52.2476(b), any change to a provision of the state implementation plan described in 40 CFR 52.2476(a) must be submitted by Ecology for approval by EPA in accordance with the requirements of 40 CFR 51.104. In accordance with 40 CFR 51.104, variances approved under (~~(this)~~) Article III (~~(shall)~~) will not be included in orders or permits provided for in RCW (~~(70.94.152)~~) 70A.15.2210 (Notice of Construction) or RCW (~~(70.94.161)~~) 70A.15.2260 (Operating Permits) until such time as the variance has been accepted by the EPA as part of an approved State Implementation Plan in 40 CFR Part 52, subpart WW.

~~(E.)~~ (C) Conditions for Granting a Variance.

~~(1)~~ Pursuant to RCW (~~(70.94.181)~~) 70A.15.2310(1), variances may be issued by the Board if it finds that:

~~(1.)~~ (a) The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and

~~(2.)~~ (b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

~~(2)~~ The interests of the applicant, other owners of property likely to be affected by the emissions, and the general public must also be considered pursuant to Section 3.01(~~(-E)~~) (E) and RCW (~~(70.94.181)~~) 70A.15.2310(2).

~~(D.)~~ (D) Complete Application. In addition to the requirements of Section 3.01(~~(-A)~~) (A) (~~(above)~~), applicants seeking a variance must submit an accurate and complete application. Application must be made using (~~(forms provided by)~~) SRCAA prepared and furnished forms. An application is not deemed complete until all of the information identified below is received. At a minimum, applicants must submit all of the following information:

~~(1.)~~ (1) A list of interested parties and neighbors within five hundred (500) feet or more of the property on which the variance is proposed to occur, including mailing addresses, or as deemed necessary by the Control Officer.

~~(2.)~~ (2) The specific laws and/or regulations from which a variance is being sought.

~~(3.)~~ (3) How compliance with rules or regulations from which the variance is sought would produce serious hardship to the applicant without equal or greater benefits to the public.

~~(4.)~~ (4) An explanation of the time period for which the variance is sought; not to exceed one (1) year.

~~(5.)~~ (5) How the applicant will comply with the applicable laws and/or regulations following expiration of the variance so as to alleviate the need for a renewal of a variance, if one is approved.

~~((6.))~~ (6) An explanation, if applicable, as to why there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved.

~~((7.))~~ (7) If alternatives are available, what the cost of the alternatives are. Supporting documentation must be provided.

~~((8.))~~ (8) Detailed maps of the site subject to the variance application.

~~((9.))~~ (9) Any additional information requested by SRCAA prior to, during, or following submittal of the application.

~~((10.))~~ (10) The variance application must be complete and accurate and a statement to this effect by the applicant must be included in the application. Incomplete or inaccurate applications may be returned to the applicant for completion or correction.

~~((11.))~~ (11) If the variance application requires Ecology's approval pursuant to Section 3.01(~~(B)~~) (B), the applicant must demonstrate to SRCAA that a variance application has been approved by Ecology (i.e. by submitting a copy of Ecology's written decision (~~to approve the variance~~)) to SRCAA).

~~((E.))~~ (E) Public Notice and Public Hearing.

(1) Variance may be issued only after public involvement per (~~WAC 173-400-171~~) SRCAA Regulation I, Article V, Section 5.05. No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within five hundred (500) feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond five hundred (500) feet, if deemed necessary. A thirty (30) (~~(-))~~ calendar day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

~~((1.))~~ (a) The time, date, and place of the hearing;

~~((2.))~~ (b) The name and address of the owner or operator and the source;

~~((3.))~~ (c) A brief description of the variance request; and

~~((4.))~~ (d) The deadline for submitting written comments to SRCAA.

(2) For variances that pertain to SRCAA Regulation I and a state rule, (~~from state rules,~~) SRCAA may determine that public notice and public hearing conducted by Ecology under WAC 173-400-171 satisfies the provision in (~~WAC 173-400-171~~) Article V, Section 5.05.

~~((F.))~~ (F) Variance Limitations. Any variance or renewal thereof shall be granted within the requirements of Section 3.01(~~(A and C of this Regulation)~~) (A) and (C) for not more than one (1) year under conditions consistent with the reasons therefore, and within the following limitations:

~~((1.))~~ (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

~~((2.))~~ (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as

in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

~~((3-))~~ (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01(~~(.F.1 and 3.01.F.2 of this Regulation)~~) (F)(1) and (2), it shall be for not more than one (1) year.

~~((G-))~~ (G) Renewal. Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of a complete and accurate application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or SRCAA.

~~((H-))~~ (H) Appeal Process. A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW, as of the effective date of this regulation or thereafter amended.

~~((I-))~~ (I) Emergency Provisions. Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW (~~(70.94.710)~~) 70A.15.6000 through (~~(70.94.730)~~) 70A.15.6040 (Air Pollution Episodes) to any person or his or her property.

~~((J-))~~ (J) Processing Period. Unless the applicant and the Board agree to a continuance, an application for a variance, or for the renewal thereof, submitted to the Board pursuant to Section 3.01(~~(.B.1)~~) (B)(1) shall be approved or disapproved by the Board within sixty-five (65) days of SRCAA determining that the application for a variance is accurate and complete and receiving the filing fee referenced in Section 3.02(~~(.A)~~) (A). If approval from Ecology is required per Section 3.01(~~(.B.2)~~) (B)(2), and unless the applicant and the Board agree to a continuance, approval or denial by the Board shall occur within sixty-five (65) days of receipt of all of the following: an accurate and complete application, Ecology's written decision to approve the variance, and the filing fee referenced in Section 3.02(~~(.A)~~) (A).

AMENDATORY SECTION

SECTION 3.02 FEES

~~((A-))~~ (A) Fees. Except as provided in Section 3.02(~~(.B)~~) (B), below, the filing fees, all legal fees, legal notice fees, and all hourly fees incurred by SRCAA must be paid by the applicant regardless of whether the variance is granted, denied, or determined to be incomplete.

~~((1-))~~ (1) Filing Fees. For applications submitted pursuant to Section 3.01(~~(.B.1)~~) (B)(1) (SRCAA(~~(-only regulations)~~) Regulation I only), a filing fee as specified in SRCAA Regulation I, Article X,

Section 10.08 (~~(of this Regulation and SRCAA's fee schedule)~~) and Section 10.08 of the Consolidated Fee Schedule shall be submitted at the time of application and shall be applied to the final invoice fee. For applications submitted pursuant to Section 3.01(~~(-B.2)~~) (B) (2) (SRCAA (~~(regulations)~~) Regulation I and Ecology rules), a filing fee as specified in Section 10.08 in Article X and (~~(of this Regulation and SRCAA's fee schedule)~~) in the Consolidated Fee Schedule shall be submitted at the same time Ecology's written approval is submitted to SRCAA pursuant to Section 3.01(~~(-F)~~) J and shall be applied to the final invoice fee.

(~~(2-)~~) (2) Legal Fees/Legal Notice Fees. The applicant shall also be responsible to pay all legal fees incurred by SRCAA directly attributed to the application for a variance and costs associated with any legal notice(s) required pursuant to (~~(this)~~) Article III.

(~~(3-)~~) (3) Hourly Fees. An hourly fee, as established in Section 10.08 (~~(of this Regulation and SRCAA's fee schedule)~~) of the Consolidated Fee Schedule, shall also be assessed to, and paid by, the applicant for applications reviewed by SRCAA pursuant to (~~(this)~~) Article III.

(~~(B-)~~) (B) Reduced Fees or Refunds. The applicant may request that some portion of the variance fees be waived or refunded if it is demonstrated to the Board that SRCAA's variance application process (~~(didn't)~~) did not fully and accurately inform the applicant of the variance process described in Sections 3.01-3.02(~~(-A)~~) (A) (~~(of this Regulation)~~). Such request must be made in writing no later than thirty (30) days after denial or approval of the variance by the Board. Any fee reductions or refunds shall be at the full discretion of the Board.

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

AMENDATORY SECTION

SECTION 4.01 REGISTRATION REQUIRED

(A) Stationary Source Registration. The Agency regulates the classes of stationary sources and source categories listed in SRCAA Regulation I, Article IV, Section 4.04, under the authority of RCW (~~(70.94.151)~~) 70A.15.2200. A stationary source listed in Section 4.04, whether publicly or privately owned, must register with the Agency, unless exempted under Article IV, Section 4.03.

(B) Purpose. The registration program allows the Agency to maintain a current and accurate record of air contaminant sources. Information collected through registration is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(C) Registration Program Components.

(1) Initial registration and annual or other periodic reports from stationary source owner or operator.

(2) On-site inspections necessary to verify compliance with registration requirements.

(3) Data storage and retrieval systems necessary for support of the registration program.

(4) Emission inventory reports and emission reduction credits computed from information provided by source owner/operator under the registration requirements.

(5) Staff review, including engineering analysis for accuracy and current information provided by source under the registration program.

(6) Clerical, administrative, and other office support of the registration program.

AMENDATORY SECTION

SECTION 4.04 STATIONARY SOURCES AND SOURCE CATEGORIES SUBJECT TO REGISTRATION

(A) Subject to Registration. The following stationary sources and source categories are subject to registration. Emission rates in SRCAA Regulation I, Article IV, Section 4.04 are based on uncontrolled PTE emissions, unless otherwise noted.

(1) Stationary sources or source categories subject to state requirements:

(a) Any stationary source that qualifies as a new major stationary source, or a major modification (173-400-820 WAC).

(b) Any modification to a stationary source that requires an increase either in a facility-wide emission limit or a unit specific emission limit.

(c) Any stationary source with significant emissions as defined in WAC 173-400-810.

(d) Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its PTE (synthetic minor) through an order issued by the Agency.

(2) Any stationary sources or source categories:

(a) Required to obtain an Order of Approval under Regulation I, Article V.

(b) Subject to General Order of Approval (GOA) under Article V and WAC 173-400-560.

(c) For which the Control Officer determines that emissions of the stationary source, including fugitive emissions, are likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(3) Stationary sources with the following operations:

(a) Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and abrasive blasting operations that do not exhaust or release fugitive emissions to the ambient air.

(b) Acid production plants, including all acids listed in Chapter 173-460 WAC.

(c) Agricultural chemicals, manufacturing, mixing, packaging or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).

(d) Agricultural drying and dehydrating operations.

(e) Alumina processing operations.

(f) Ammonium sulfate manufacturing plants.

(g) Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

(h) Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

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

(j) Chemical manufacturing operations.

(k) Coffee roasting operations.

- (l) Composting operations except noncommercial agricultural and noncommercial residential composting activities.
- (m) Concrete production operations and ready mix plants.
- (n) Flexible polyurethane foam, polyester resin, and styrene production operations.
- (o) Flexible vinyl operations and urethane coating operations.
- (p) Fuel refining operations, blending operations, production operations, including alternative commercial fuel production facilities (e.g. ethanol, bio-diesel, etc.)
- (q) Gasoline and aviation gas storage and dispensing, including:
 - 1. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total gasoline storage capacities greater than 10,000 gallons; and
 - 2. Bulk gasoline, and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.
- (r) Grainhandling; seed, pea, and lentil processing facilities. Registration shall be in accordance with Article IV, Section 4.03.
- (s) Hay cubing or pelletizing operations established at a dedicated collection and processing site.
- (t) Insulation manufacturing operations.
- (u) Metal casting facilities and foundries, ferrous.
- (v) Metal casting facilities and foundries, nonferrous.
- (w) Metal plating and anodizing operations.
- (x) Metallurgical processing operations.
- (y) Mills; grain, seed, feed and flour production, and related operations.
- (z) Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.
- (aa) Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture, and wood by-products).
- (bb) Mineral processing (metallic and nonmetallic), including, but not limited to, rock crushing, sand and gravel mixing operations, except stand-alone rock, soil, or wood screening/conveying operations and blasting operations.
- (cc) Mineralogical processing operations.
- (dd) Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).
- (ee) Paper manufacturing operations, except Kraft and sulfite pulp mills.
- (ff) Perchloroethylene dry cleaning operations.
- (gg) Pharmaceuticals production operations.
- (hh) Plastics and fiberglass fabrication, including gelcoat, polyester resin, or vinylester coating operations using more than 55 gals/yr of all materials containing volatile organic compounds or toxic air pollutants.
- (ii) Portland Cement production facilities.
- (jj) Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, and 562219, respectively), including municipal waste combustors; landfills with gas collection systems or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than POTWs.
- (kk) Rendering operations.
- (ll) Semiconductor manufacturing operations.
- (mm) Sewerage systems, POTWs with a rated capacity of more than one million gallons per day (SIC 4952/NAICS 221320).

- (nn) Stump and wood grinding established at a dedicated collection and processing site.
- (oo) Surface coating, adhesive, and ink manufacturing operations.
- (pp) Surface coating operations:
1. All motor vehicle or motor vehicle component surface coating operations; and
 2. General surface coating operations with PTE emissions greater than 100 lbs/yr or with PTE toxic air pollutant emissions that exceed any SQER listed in Chapter 173-460 WAC.
- (qq) Synthetic fiber production operations.
- (rr) Synthetic organic chemical manufacturing operations.
- (ss) Tire recapping operations.
- (tt) Wholesale meat/fish/poultry slaughter and packing plants.
- (4) Stationary sources with the following equipment:
- (a) Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:
 1. 500,000 Btu/hr using coal or other solid fuels with less than or equal to 0.5% sulfur;
 2. 500,000 Btu/hr using used/waste oil, per the requirements of RCW (~~(70.94.610)~~) 70A.15.4510;
 3. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, including alternative liquid fuels (i.e., biodiesel, bio-fuels, etc) except used/waste oil;
 4. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; or
 5. 400,000 Btu/hr, wood, wood waste.
 - (b) Incinerators, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.
 - (c) Internal combustion engines
 1. Used for standby, back-up operations only, and rated at or above 500 bhp.
 2. Stationary internal combustion engines, other than those used for standby or back-up operations, rated at 100 bhp or more and are integral to powering a stationary source. This includes but is not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.
 - (d) Particulate control at materials handling and transfer facilities that generate fine particulate and exhaust more than 1,000 acfm to the ambient air. This may include (~~(pneumatic conveying)~~) cyclones, baghouses, or industrial housekeeping vacuuming systems.
 - (e) Storage tanks within commercial or industrial facilities, with capacities greater than 20,000 gallons and storing organic liquids with a vapor pressure equal to or greater than 1.5 psia at 68°F.
- (5) Any stationary source or stationary source category not otherwise identified above, with uncontrolled emissions rates above those listed in (a) - (d):
- (a) Any single criteria pollutant, or its precursors, as defined in 40 CFR 51.165, exceeding emission rates of 0.5 tons/yr, or in the case of lead, emissions rates greater than or equal to 0.005 tons/yr;
 - (b) TAPs with emission rates exceeding the SQER established in Chapter 173-460 WAC;
 - (c) Combined air contaminants (criteria pollutants, VOCs, or TAPs) in excess of one (1.0) ton/yr; or
 - (d) Combined TAPs and VOC emissions greater than 0.5 tons/yr.

(e) The criteria in Section 4.04 (A) (5) (a)-(d) applies to, but is not limited to the following stationary source categories:

1. Bakeries;
2. Bed lining or undercoating production or application operations;
3. Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top, and conveyORIZED cleaner;
4. Distilleries;
5. Dry cleaning non-perchloroethylene operations;
6. Evaporators;
7. General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or pre-packaged aerosol can);
8. Graphic art systems including, but not limited to, lithographic and screen printing operations;
9. Organic vapor collection systems within commercial or industrial facilities, including fume hoods;
10. Ovens, furnaces, kilns and curing with emissions other than combustion emissions;
11. Plasma or laser cutters;
12. Soil and groundwater remediation operations;
13. Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations;
14. Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given);
15. Welding, brazing, or soldering operations; or
16. Wood furniture stripping and treatment operations (commercial only).

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

AMENDATORY SECTION

SECTION 5.02 NEW SOURCE REVIEW APPLICABILITY AND WHEN REQUIRED

(A) Purpose. SRCAA Regulation I, Article V contains the new source review requirements for stationary and portable sources in Spokane County.

(B) Applicability. Article V applies to all stationary sources, portable sources and source categories listed in Article IV, Section 4.04, unless specifically exempted Article V, Section 5.02(I).

(C) NOC Required for New or Modified Stationary Sources. A NOC application must be filed by the owner or operator and an Order of Approval issued by the Agency prior to the establishment of any of the following stationary source or source categories:

- (1) New stationary sources and source categories subject to the applicability criteria in Article IV, Section 4.04;
- (2) Establishment of a new major stationary source as defined in WAC 173-400-710 and 173-400-810;
- (3) Modifications to an existing stationary source which results in an increase in actual emissions or that requires an increase in either a facility-wide or a unit specific emission limit;
- (4) A major modification to an existing major stationary source as defined in WAC 173-400-710 and 173-400-810;
- (5) Any stationary source with emissions that exceed the SQER in Chapter 173-460 WAC;
- (6) Like-kind replacement of existing emissions unit(s);

(7) Existing stationary source replacement or substantial alteration of control equipment;

(8) A stationary source or emission unit(s) resuming operation after it has been closed per Article IV, Section 4.05;

(9) An existing stationary source that is relocated;

(10) A stationary source that applies for coverage under a GOA issued by the Agency under WAC 173-400-560 in lieu of filing a NOC application under Article V, Section 5.02; or

(11) Any stationary source the Agency determines must file a NOC application and obtain an Order of Approval in order to reduce the potential impact of air emissions on human health and safety, prevent injury to plant, animal life, and property, or which unreasonably interferes with enjoyment of life and property.

(D) PSP Required for New or Modified Portable Sources. A PSP application must be filed by the owner or operator and a Permission to Operate issued by the Agency prior to the establishment of any portable sources subject to the applicability criteria in Article IV, Section 4.04, which locate temporarily at locations in Spokane County, unless specifically exempted in 5.08(D).

(E) Modification Review. New source review of a modification is limited to the emissions unit(s) proposed to be added or modified at an existing stationary source and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(F) AOP Integrated Review. An owner or operator seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW ((~~70.94.161~~) 70A.15.2260), and the NOC application required by Article V. A NOC application designated for integrated review must be processed in accordance with the provisions in Chapter 173-401 WAC.

(G) New Major Stationary Source or Major Modification in Nonattainment Areas. The proposed project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860 if:

(1) It is a new major stationary source or major modification, located in a designated nonattainment area;

(2) The project emits the air pollutant or its precursors for which the area is designated nonattainment; and

(3) The project meets the applicability criteria in WAC 173-400-820.

(H) PSD Permitting with New Major Stationary Source or Major Modification. If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(I) Stationary Sources Exempt from Article V.

(1) The following stationary sources are exempt from the requirement to file a NOC application and obtain an Order of Approval, provided that the source has registered with the Agency per Article IV, prior to placing the source in operation:

(a) Batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

(b) Motor vehicle or motor vehicle component surface coating operations with PTE emissions less than one hundred (100) lbs/yr and

with PTE toxic air pollutant emissions that do not exceed any SQER listed in Chapter 173-460 WAC.

(c) General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or pre-packaged aerosol can) with PTE emissions above the thresholds listed in Article IV, Section 4.04 (A) (3) (pp)2., but below thresholds presented in Sections 4.04 (A) (5) (a - d).

(2) Exemption documentation. The owner or operator of any stationary source exempted under Article V must maintain documentation in order to verify the stationary source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemption in Section 5.02 (I) (1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit and NOC application and receive an Order of Approval from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.02 (I) (1) is not an exemption from registration under Article IV or any other provision of Regulation I. (~~(Portable sources are exempt from registration [Section 4.03 (A) (3)].~~)

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

AMENDATORY SECTION

SECTION 5.04 INFORMATION REQUIRED

(A) NOC and PSP Information. Each NOC application or PSP application must be accompanied by appropriate documentation that provides a detailed description of the stationary source or portable source to enable the Agency to determine that the source or emissions unit will comply with Chapter ~~((70.94))~~ 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s). Information must be submitted on Agency prepared and furnished forms. Such information must include:

(1) The new or modified stationary source, portable source, emissions unit, or control equipment;

(2) Any equipment connected to, serving, or served by the new or modified stationary source or portable source;

(3) A plot plan, including the distance to, length, width, and height of; buildings within two hundred (200) feet, or other distance specified by the Agency, from the place where the new or modified stationary source or portable source will be installed;

(4) The proposed means for the prevention or control of the emissions of air contaminants;

(5) Estimated emissions resulting from the proposal and the basis for the estimates, or sufficient information for the Agency to determine the expected emissions;

(6) Any additional information required by the Agency to show that the proposed new or modified stationary source or portable source will meet the applicable air quality requirements of Chapter ~~((70.94))~~ 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s);

(7) Any additional information required under WAC 173-400-112 or WAC 173-400-113; and

(8) The owner or operator must provide documentation that the requirements of Chapter 197-11 WAC, State Environmental Policy have been met. If the Agency is the lead agency for review of an Environmental Checklist (SEPA) or EIS related to the NOC or PSP application being submitted, then the owner or operator filing the SEPA must pay a SEPA review fee according to SRCAA Regulation I, Article X, Section 10.07. This fee must be paid without regard to the final SEPA determination. The cost of publishing any required public notice must be paid by the owner or operator.

(B) Signature. Each NOC or PSP application must be signed by the owner or operator of the new or modified stationary source or portable source.

AMENDATORY SECTION

SECTION 5.05 PUBLIC INVOLVEMENT

(A) Public Notice and Opportunity for Public Comment.

(1) SRCAA Regulation I, Article V, Section 5.05 specifies the requirements for notifying the public about air quality actions and provides opportunities of the public to participate in those actions.

(2) Applicability to Prevention of Significant Deterioration (PSD). This Section does not apply to a NOC designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification of WAC 173-400-740 is required.

(B) Public Notice of Application.

(1) A notice must be published on the Agency's website announcing the receipt of NOC applications and PSP applications. Notice will be published for a minimum fifteen (15) consecutive days. Duration does not require uninterrupted website access. Each notice will include the following information:

(a) Notice of the receipt of the application;

(b) The type of proposed action; and

(c) A statement that the public may request a public comment period on the proposed action per Article V, Section 5.05 (B) (2).

(2) Requests for a thirty (30) day public comment period concerning applications, orders, proposed projects, or actions must be submitted to the Agency in writing via letter, fax, or electronic means within fifteen (15) days of the posting date on the Agency's website.

(a) A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) for any application or proposed action that receives such a request.

(b) Any application or proposed action for which a thirty (30) day public comment period is not requested may be processed without further public involvement at the end of the fifteen (15) day comment period referenced in Section 5.05 (B) (1).

(3) If state or federal regulations require public notice, the public notice must occur in a manner that complies with Section 5.05 and those sections of the state or federal regulations that are applicable.

(C) Mandatory Public Comment Period. A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) before approving or denying any of the following:

(1) An application, order, or proposed action for which a public comment period is requested in compliance with Section 5.05 (B) (2);

(2) An order for a new stationary source or modification of an approved stationary source that increases the annual allowable emis-

sions of the approved source to ten (10) tons or more of any air contaminant, criteria pollutant, or toxic air pollutant;

(3) A NOC or PSP application for a new or modified source if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030), or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under Chapter 173-460 WAC;

(4) Use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51, as part of review under Article V, Sections 5.02 and 5.08, WAC 173-400-112, WAC 173-400-113, or WAC 173-400-117;

(5) ~~Any~~ An order to determine RACT;

(6) An order to establish a compliance schedule or a variance. A variance shall be in accordance with Regulation I, Article III;

(7) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five (65) meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(8) An order to authorize a bubble, under RCW ((~~70.94.155~~)) 70A.15.2240 and WAC 173-400-120;

(9) An action to discount the value of an ERC, issued to a source per WAC 173-400-136;

(10) A regulatory order to establish BART for an existing stationary facility;

(11) A NOC application or regulatory order used to establish a creditable emission reduction;

(12) An order issued under WAC 173-400-091 that establishes limitations on PTE;

(13) An extension of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area;

(14) The original issuance and the issuance of all revisions to a GOA issued under WAC 173-400-560;

(15) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP; or

(16) An NOC application or other proposed action for which the Agency determines there is a significant public interest.

(D) Public Comment Period.

(1) After all information required by the Agency has been submitted and applicable preliminary determinations, if any, have been made, a public comment period on actions listed under Section 5.05(C) must be provided for a minimum of thirty (30) days following the date the notice is first published on the Agency website. If a public hearing is held, the comment period must (~~extend~~) extend through the hearing date.

(2) Availability for public inspection.

(a) Administrative record. The information submitted by the owner or operator, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, must be available for public inspection in at least one (1) location near the proposed project or on the Agency website for the duration of the public comment period. Duration does not require uninterrupted website access.

(b) The Agency must post the following information on their website for the duration of the public comment period. Duration does not require uninterrupted website access.

1. Public notice must include the information described in Section 5.05 (D)(4);
2. Draft permit, order, or action; and
3. Information on how to access the administrative record.
 - (3) Publication of comment period notice.
 - (a) Public notice of all applications, orders, hearings, or actions listed in Article V, Section 5.05(C) must be posted on the Agency's website for the duration of the public comment period. Duration does not require uninterrupted website access.
 - (b) The Agency may supplement Agency website notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.
 - (4) Notice for a public comment period must include the following information:
 - (a) Date the public notice is posted;
 - (b) The name and address of the owner or operator and the affected facility;
 - (c) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;
 - (d) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;
 - (e) The location where those documents made available for public inspection may be reviewed;
 - (f) Start date and end date for the thirty (30) day public comment period;
 - (g) A statement that a public hearing may be held if the Agency determines within a thirty (30) day period that significant public interest exists;
 - (h) The name, address, telephone number, and e-mail address of a person at the Agency where interested persons may obtain additional information, including copies of the permit draft, application, relevant supporting materials, compliance plan, permit, monitoring, compliance certification report, and all other materials available to the Agency that are relevant to the permit decision;
 - (i) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117, the public notice must explain the Agency's decision; and
 - (j) Any other information required under state or federal laws or regulations.
 - (5) The cost of publishing any public notice required by Article V, Section 5.05 must be paid by the owner or operator.
 - (6) EPA notification. The Agency must send a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.
 - (7) Consideration of public comment. The Agency must make a final decision after the public comment period has ended and comments timely received have been considered.
 - (8) Public hearings.
 - (a) The owner or operator, any interested governmental entity, group, or person may request a public hearing within the thirty (30) day public comment period. All hearing requests must be submitted to the Agency in writing via letter, fax, or electronic means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(b) The Agency may hold a public hearing if it determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period will extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(c) Notice of public hearings. At least thirty (30) days prior to the public hearing, the Agency must provide notice of the hearing as follows:

1. Post a public hearing notice on the Agency's website as directed by Section 5.05 (D) (4) for the duration of the public comment period. Duration does not require uninterrupted website access.

2. Distribute by electronic means or postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing, and in the case of a permit action, to the owner or operator.

3. The notice must include the date, time, and location of the public hearing.

4. The Agency may supplement Agency website notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.

(E) Public Involvement for Integrated Review with an Air Operating Permit. Any NOC application designated for integrated review with an application to issue or modify an operating permit must be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC), as adopted by reference.

(F) Other Requirements of Law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this Section (e.g. SEPA).

(G) Information for Public Review. All information must be made available for public inspection at the Agency, including copies of NOC applications, Orders of Approval, regulatory orders, and modifications thereof. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW (~~(70.94.205)~~) 70A.15.2510 and Regulation I, Article II, Section 2.03.

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

AMENDATORY SECTION

SECTION 5.07 PROCESSING NOC APPLICATIONS FOR STATIONARY SOURCES

(A) For New or Modified Stationary Sources.

(1) Criteria for approval of a NOC application. An Order of Approval cannot be issued until the requirements of the identified regulations (~~(following criteria)~~) are met as applicable:

(a) (~~(The requirements of)~~) WAC 173-400-112 - Requirements for new sources in nonattainment areas—Review for compliance with regulations;

(b) (~~(The requirements of)~~) WAC 173-400-113 - New sources in attainment or unclassifiable areas—Review for compliance with regulations;

(c) (~~(The requirements of)~~) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(d) (~~(The requirements of)~~) Article V, Section 5.05;

(e) (~~The requirements of~~) WAC 173-400-200 - Creditable stack height and dispersion techniques and WAC 173-400-205 - Adjustment for atmospheric conditions;

(f) (~~The requirements of~~) WAC 173-400-800 - Major stationary source and major modification in a nonattainment area through WAC 173-400-860 - Public involvement procedures;

(g) (~~The requirements of~~) Chapter 173-460 WAC - Controls for new sources of toxic air pollutants; and

(h) All fees required under SRCAA Regulation I, Article X, Sections 10.07 and 10.08 have been paid.

(2) Within sixty (60) days of receipt of a complete NOC application, the Agency must either issue a final determination on the application or, when required, initiate public notice and comment procedures under Article V, Section 5.05. The Agency must issue a final determination as promptly as possible after the close of the comment period.

(3) The final determination may include:

(a) An Order of Denial, if the proposal is not in accordance with Chapter (~~70.94~~) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s); or

(b) An Order of Approval which may provide reasonable conditions necessary to assure compliance with Chapter (~~70.94~~) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(4) The final determination on a NOC application must be reviewed and signed by a professional engineer prior to issuance.

(5) The Agency must promptly mail a copy of each order, approving, denying, revoking, revising, or suspending an Order of Approval or Permit to Operate to the applicant and to any other party who submitted timely comments on the action. The approval, denial, revocation, revision, or suspension order must include a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) If the new source is a major stationary source, or the change is a major modification subject to the requirements of WAC 173-400-800 through 860, the Agency must:

(a) Submit any LAER control equipment determination included in a final Order of Approval to the RACT/BACT/LAER Clearinghouse maintained by the EPA; and

(b) Send a copy of the final Order of Approval, with the LAER control equipment determination, to EPA.

(7) The owner or operator of a stationary source must not begin actual construction(~~r~~) until the Agency approves the NOC application and issues an Order of Approval.

(B) Replacement or Substantial Alteration of Control Equipment. An owner or operator proposing to replace or substantially alter the control equipment installed on an existing stationary source or emission unit must file a NOC application with the Agency. A project to replace or substantially alter control technology at an existing stationary source that results in an increase in emissions of any air contaminant is subject to new source review as provided in Section 5.07(A). For any other project to replace or substantially alter control equipment, the requirements of 5.07 (B)(1) through (5) apply. Replacement or substantial alteration of control equipment does not include routine maintenance, repair, or similar parts replacement.

(1) Within thirty (30) days of receipt of a complete NOC application, the Agency must issue a final determination. The final determination may include:

- (a) An Order of Approval;
- (b) An Order of Denial; or

(c) A proposed RACT determination for the project per WAC 173-400-114.

(2) The final determination may:

(a) Require that the owner or operator employ RACT for the affected emissions unit;

(b) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(c) Prescribe other requirements as authorized by Chapter ((70.94)) 70A.15 RCW.

(3) The final determination on a NOC application must be reviewed and signed by a professional engineer prior to issuance.

(4) The Agency must promptly mail a copy of each order, approving, denying, revoking, revising, or suspending an Order of Approval or Permission to Operate to the owner or operator, and to any other party who submitted timely comments on the proposed action. The order must include a notice advising the parties of their rights of appeal to the PCHB.

(5) Construction shall not commence until the Agency approves the NOC application and issues an Order of Approval. However, any NOC application, filed under Section 5.07(B), shall be deemed to be approved without conditions, if the Agency takes no action within thirty (30) days of receipt of a complete application.

AMENDATORY SECTION

SECTION 5.08 PORTABLE SOURCES

(A) PSP Required for New or Modified Portable Sources.

(1) A PSP application must be filed by the owner or operator and a ((n)) Permission to Operate issued by the Agency prior to the establishment of any portable sources listed in Article IV, Section 4.04 Stationary sources and source categories subject to registration, which locate temporarily at locations in Spokane County. Exemptions are provided in Section 5.08(D).

(2) Each time that a portable source will relocate to operate at a new location in Spokane County, the owner or operator must submit a PSP application and obtain an approved Permission to Operate issued by the Agency.

(3) The PSP application must be filed at least fifteen (15) calendar days prior to operating at a new location.

(4) Information required in Article V, Section 5.04, must be supplied by the owner or operator to enable the Agency to determine that the operation is in accordance with Chapter ((70.94)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(5) A PSP application cannot be approved and a Permission to Operate cannot be issued until the criteria given in Section 5.07(A), as applicable, has been met.

(6) Nonroad engines are reviewed under the following:

(a) Except as provided in Article V, Section 5.08(D), nonroad engines are required to submit a PSP application and obtain an approved Permission to Operate if:

1. The nonroad engine is rated at 500 or more bhp; and

2. The nonroad engine operates at the site for thirty (30) or more calendar days in any twelve (12) month period. Nonroad engines anticipated to operate more than thirty (30) days in any twelve (12) month period, but less than one (1) year are subject to the requirements of Article V, Section 5.08. When the nonroad engine operates at the site for more than three hundred sixty-four (364) consecutive days, a NOC application must be filed by the owner or operator and approved by the Agency.

(b) Nonroad engines required to obtain approval of a PSP application per Section 5.08 are reviewed under the following criteria:

1. Emission impacts must comply with NAAQS;
2. Must meet applicable federal standards for nonroad diesel engines (40 CFR Part 89, if applicable);
3. Must use ultra low sulfur fuel (equal to or less than 0.0015% sulfur by weight);
4. Must be properly operated and maintained; and
5. Opacity from each nonroad engine must not exceed 10%, as determined per EPA Method 9.

(B) Permission to Operate.

(1) Permission to Operate may be granted subject to conditions necessary to assure compliance with Chapter ((70.94)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s). If any conditions listed in Article V, Section 5.05(C) are applicable to the proposal, a public comment period must be held according to Section 5.05(D).

(2) Permission to Operate may be granted for a limited time, but in no case remains effective for more than three hundred sixty-four (364) consecutive days from the Permission to Operate approval date. If operation will exceed three hundred sixty-four (364) days, the owner or operator must submit an NOC application per Section 5.02, and receive an Order of Approval per Section 5.07.

(3) The owner or operator of a portable source must not install or operate the portable source until the Agency approves the PSP application and issues a Permission to Operate.

(4) Portable sources that meet the criteria in Article IV, Section 4.03 (A)(3) are exempt from registration.

(C) Permission to Operate Becomes Invalid if:

(1) Construction, installation, or operation does not begin within ninety (90) days of receipt of Permission to Operate, unless a longer time is approved by the Agency;

(2) The operation is removed from the site;

(3) The portable source is operated at a location after three hundred sixty-four (364) days from the Permission to Operate approval date; or

(4) The owner or operator of a portable source establishes a permanent stationary source at that site for which the Permission to Operate was approved.

(D) Portable Sources Exempt from Article V, Section 5.08.

(1) The following portable sources are exempt from the requirement to file a PSP application and obtain a Permission to Operate, prior to placing the portable source in operation.

(a) Portable sources listed in 1. through 4. Below, that emit pollutants below those presented in WAC 173-400-100:

1. Abrasive blasting.
2. Rock drilling operations.
3. Blasting operations.

4. Woodwaste chipping and grinding operations, except for operations that establish a permanent collection, storage, or processing facility at a site or sites for purpose of future processing, must obtain the Agency's approval of a NOC application, prior to establishment of the stationary source.

(b) Soil and groundwater remediation projects that emit pollutants below those presented Article IV, Sections 4.04 (A) (5) (a) through (d).

(c) All nonroad engines associated with portable rock crushing operations, portable asphalt production operations, and portable concrete production operations.

(2) Exemption documentation. The owner or operator of any portable source exempted under Section 5.08(D) must maintain documentation in order to verify the portable source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemptions in 5.08 (D) (1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit a PSP application and receive a Permission to Operate from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.08(D) is not an exemption from Regulation I. (~~(, however portable sources are exempt from registration [Section 4.03 (A) (3)].~~)

(E) Prevention of Significant Deterioration. Except for nonroad engines, a portable source that is considered a major stationary source or major modification within the meaning of WAC 173-400-113, must also comply with the requirements in WAC 173-400-700 through 750, as applicable. If a portable source is locating in a nonattainment area and if the portable source emits the pollutants or pollutant precursor for which the area is classified as nonattainment, the portable source must acquire a site-specific Order of Approval.

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

SECTION 5.10 CHANGES TO AN ORDER OF APPROVAL OR PERMISSION TO OPERATE

(A) Constructed or Operated Differently than Approved Order. The Agency may revoke, revise, or suspend an Order of Approval, coverage under a GOA, or a Permission to Operate, if the Agency determines the stationary or portable source is not constructed, installed, or operated as described in the application and information request forms.

(B) Transfer of Ownership/Name Change.

(1) If an existing stationary or portable source with a valid Order of Approval or Permission to Operate is transferred to new ownership or the business changes its name per Article IV, Section 4.02(E), and the source is unchanged by the transfer/name change, then the existing order is transferable to the new ownership/name change, as written.

(2) An existing Order of Approval is not transferable to a new stationary source that is installed or established at a site where a stationary source was previously located if the business nature of the new source is different from the previous stationary source.

(C) Change in Conditions.

(1) The owner or operator may request, at any time, a change in conditions of an Order of Approval or Permission to Operate, and the Agency may approve such a request provided the Agency finds the criteria given in Section 5.07(A), as applicable, has been met.

(2) Requests. Article V does not prescribe the exact form that change of condition requests must take. If the request is submitted in writing, the Agency must act upon the request consistent with the timelines in Article V, Sections 5.06 and 5.07 for an Order of Approval, or if for a Permission to Operate, consistent with Section 5.08.

(3) Fee payment. The owner or operator requesting changes to an Order of Approval or Permission to Operate per Section 5.10 must pay applicable fees, as established in SRCAA Regulation I, Article X, Section 10.07.

(D) Agency Initiated Changes in Conditions.

(1) Order of Approval and Permission to Operate revisions may be initiated by the Agency, without fees charged to the owner or operator, provided the owner or operator of the stationary source has complied with all applicable requirements of Chapter ((70.94)) 70A.15 RCW, the rules and regulations adopted thereunder, ((and)) the Agency's regulation(s), and the Agency determines the Order of Approval or Permission to Operate has:

(a) Typographical errors;

(b) Conditions listed therein that are technically infeasible;

(c) Additional or revised provisions that are needed to ensure compliance with Chapter ((70.94)) 70A.15 RCW, the rules and regulation adopted thereunder by the state or Agency, and federal regulations; or

(d) Inaccurate ownership information, including name, address, phone number, or other minor administrative inaccuracies.

(2) The Agency may not modify, delete, or add conditions to an existing Order of Approval or Permission to Operate under Article V, Section 5.10(D), unless the owner or operator is notified in writing at least thirty (30) days in advance of the effective date of the change. Modified, deleted or added conditions may be appealed in accordance with Chapter 43.21B RCW.

(E) Public Notice of Changes in Conditions. Changes to conditions in an Order of Approval or Permission to Operate are subject to the public involvement provisions of Article V, Section 5.05.

AMENDATORY SECTION

SECTION 5.13 ORDER OF APPROVAL CONSTRUCTION TIME LIMITS

(A) Time Limit. An Order of Approval, issued under SRCAA Regulation I, Article V, Section 5.07 becomes invalid if:

(1) Construction is not commenced within eighteen (18) months after the receipt of the approval;

(2) Construction is discontinued for a period of eighteen (18) months or more; or

(3) Construction is not completed within eighteen (18) months of commencement.

(B) Extension. The Agency may grant an extension beyond the eighteen (18) month period, as provided for in Article V, Section 5.13(A), upon a satisfactory showing that an extension is justified. The Agency may approve such a request provided that:

(1) No new requirements, such as NSPS (40 CFR Part 60), NESHAP (40 CFR Parts 61 and 63), or state and local regulations, have been adopted under Chapter ((70.94)) 70A.15 RCW or the FCCA (42 USC 7401 et

seq.) which would change the Order of Approval, had it been issued at the time of the extension;

(2) No control equipment required per WAC 173-400-112, WAC 173-400-113, or WAC 173-400-114; or Article V, have been subsequently identified which would change the Order of Approval, had it been issued at the time of the extension;

(3) The information presented in the NOC application, associated documents, and the determinations by the Agency during review of the application continue to accurately represent the design, configuration, equipment, and emissions of the proposed stationary source; and

(4) The applicant certifies that the stationary source will comply with all applicable requirements of Chapter ((70.94)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(C) Phased Projects. Article V, Section 5.13(A) does not apply to the time period between construction of the approved phases of a phased construction project. Each construction phase must commence construction within eighteen (18) months of the projected and approved commencement date.

AMENDATORY SECTION

SECTION 6.01 OUTDOOR BURNING

(A) Purpose. [WAC 173-425-010 (1-3)]

SRCAA Regulation I, Article VI, Section 6.01 establishes controls for outdoor burning in Spokane County in order to:

(1) Minimize or prohibit outdoor burning to the greatest extent practicable.

(2) Minimize or eliminate the impact of emissions from outdoor burning by defining conditions under which outdoor burning may be conducted.

(3) Encourage the development and specify the use of reasonable alternatives to outdoor burning. Reasonable alternatives are methods for disposing of organic refuse (such as natural vegetation) that are available, reasonably economical, and less harmful to the environment than burning.

(4) Geographically limit outdoor burning in order to assure continued attainment of the NAAQS for carbon monoxide (CO) and fine particulate matter (PM_{2.5}) as specified in 40 CFR Part 50.

(B) Applicability. [WAC 173-425-020]

(1) Article VI, Section 6.01 applies to all outdoor burning in Spokane County except:

(a) Silvicultural burning. [RCW ((70.94.6534)) 70A.15.5120(1) & Chapter 332-24 WAC] Silvicultural burning is related to the following activities for the protection of life or property and/or the public health, safety, and welfare:

1. Abating a forest fire hazard;
2. Prevention of a forest fire hazard;
3. Instruction of public officials in methods of forest fire-fighting;
4. Any silvicultural operation to improve the forest lands of the state; and
5. Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(b) Agricultural Burning. [Article VI, Section 6.11]

Agricultural burning is burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW ((70.94.6528)) 70A.15.5090 or other authoritative source on agricultural practices.

(c) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

(2) Article VI, Section 6.01 specifically applies to:

(a) Firefighting Instruction Fires.

1. Aircraft Crash Rescue Fire Training, Section 6.01 (D) (1) (a)

2. Extinguisher Training, Section 6.01 (D) (1) (b)

3. Forest Fire Training, Section 6.01 (D) (1) (c)

4. Structural Fire Training, Section 6.01 (D) (1) (d)

5. Types of Other Firefighting Instruction Fires, Section 6.01

(D) (1) (e)

(b) Fire Hazard Abatement Fires, Section 6.01 (D) (2)

(c) Flag Retirement Ceremony Fires, Section 6.01 (D) (3)

(d) Indian Ceremonial Fires, Section 6.01 (D) (4)

(e) Land Clearing Fires, Section 6.01 (D) (5)

(f) Rare and Endangered Plant Regeneration Fires, Section 6.01

(D) (6)

(g) Recreational Fires, Section 6.01 (D) (7)

(h) Residential Fires, Section 6.01 (D) (8)

(i) Social Event Fires, Section 6.01 (D) (9)

(j) Storm or Flood Debris Fires, Section 6.01 (D) (10)

(k) Tumbleweed Fires, Section 6.01 (D) (11)

(l) Weed Abatement Fires, Section 6.01 (D) (12)

(m) Other Outdoor Fires, Section 6.01 (D) (13)

(3) The provisions of Chapter 173-425 WAC (Outdoor Burning) are herein incorporated by reference.

(4) The provisions of Article VI, Section 6.01 are severable. If any phrase, sentence, paragraph, or provision is held invalid, the application of such phrase, sentence, paragraph, or provision to other circumstances and the remainder of this Section shall not be affected.

(C) Definitions. [WAC 173-425-030]

Words and phrases used in Article VI, Section 6.01 shall have the meaning defined in Chapter 173-425 WAC, unless a different meaning is clearly required by context or is otherwise defined in this Section.

(1) *Natural Vegetation* means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood. It does not include dimensional lumber, mill((s)) ends, etc.

(2) *Outdoor Burning* means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purpose of this rule, "outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning. [RCW ((70.94.6511)) 70A.15.5000]

(3) *Permitting Agency* means the Spokane Regional Clean Air Agency (SRCAA or Agency) or Spokane County, any fire protection agency within Spokane County, Washington State Department of Natural Resources (DNR), or the Spokane County Conservation District; upon delegation by or signed agreement with SRCAA. [RCW ((70.94.6530)) 70A.15.5100]

(4) *Person* means any individual(s), firm, public corporation, private corporation, association, partnership, political subdivision, municipality, or government agency. It includes any person who has applied for and received a permit for outdoor burning; any person allowing, igniting, or attending a fire; or any person who owns or controls property on which outdoor burning occurs.

(5) *Responsible Person* means any person who has applied for and received a permit for outdoor burning, or any person allowing, igniting, or attending to a fire, or any person who owns or controls property on which outdoor burning occurs.

(D) Outdoor Burning Permitted.

(1) Firefighting Instruction Fires. [WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

Firefighting instruction fires are fires for the purpose of firefighter training, including, but not limited to aircraft crash rescue fire training, extinguisher training, forest fire training, and structural fire training. Unless specified otherwise, Article VI, Section 6.01 (D)(1) serves as a general permit by the Agency.

(a) Aircraft Crash Rescue Fire Training. [~~RCW ((70.94.6546))~~ 70A.15.5180(1-2), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

1. Aircraft crash rescue training fires meeting all of the following criteria do not require a permit:

a. Firefighters participating in the training fires are limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities.

b. The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW (~~(70.94.715))~~ 70A.15.6010 for the area where training is to be conducted.

c. The number of training fires allowed each year without a written permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements.

d. The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during the training fire.

e. The organization conducting the training shall notify the local fire district or fire department prior to commencement of the training. The organization conducting the training shall also notify the Agency prior to commencement of the training.

2. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to all aircraft crash rescue fire training fires as listed below:

a. Aircraft crash rescue fire training fires are exempt from the following:

- i. (F)(2) Hauled Materials
- ii. (F)(6) Containers
- iii. (F)(8) Distances
- iv. (F)(10) Burn Hours
- v. (F)(11) Number of Piles
- vi. (F)(12) Fuel Area
- vii. (F)(13) Written Permits
- viii. (F)(15) Areas Prohibited

b. Aircraft crash rescue fire training fires must comply with the following:

- i. (F)(1) Prohibited Materials (except petroleum products)

- ii. (F)(3) Curtailments
- iii. (F)(4) Nuisance
- iv. (F)(5) Burning Detrimental to Others
- v. (F)(7) Extinguishing a Fire
- vi. (F)(9) Landowner Permission
- vii. (F)(14) Property Access
- viii. (F)(16) Other Requirements

3. Persons conducting aircraft crash rescue fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(b) Extinguisher Training. [WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)] Extinguisher training fires of short((-)duration for instruction on the proper use of hand-held fire extinguishers may be conducted without a written permit provided all of the following requirements are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to extinguisher training fires as listed below:

a. Extinguisher training fires are exempt from the following:

- i. (F)(2) Hauled Materials
- ii. (F)(6) Containers
- iii. (F)(8) Distances
- iv. (F)(10) Burn Hours
- v. (F)(11) Number of Piles
- vi. (F)(12) Fuel Area
- vii. (F)(13) Written Permits
- viii. (F)(15) Areas Prohibited

b. Extinguisher training fires must comply with the following:

i. (F)(1) Prohibited Materials (except as provided for in Section 6.01 (D) (1) (b)2.)

- ii. (F)(3) Curtailments
- iii. (F)(4) Nuisance
- iv. (F)(5) Burning Detrimental to Others
- v. (F)(7) Extinguishing a Fire
- vi. (F)(9) Landowner Permission
- vii. (F)(14) Property Access
- viii. (F)(16) Other Requirements

2. Flammable or combustible materials used during the fire extinguisher training shall be limited to:

a. Less than two (2) gallons of clean kerosene or diesel fuel oil per training exercise, provided that gasoline or gasoline mixed with diesel or kerosene may be used only by local fire departments, fire protection agencies, fire marshals, or fire districts;

b. As much gaseous fuel (propane or natural gas) as required for the training exercise; or

c. Less than one-half (0.5) cubic yards of clean, solid combustible materials per training exercise. Examples of solid combustible materials are seasoned wood, untreated scrap lumber, and unused paper.

3. All training must be conducted by fire training officials or an instructor qualified to perform fire training. A copy of the written training plan, and when applicable, instructor qualifications, must be provided to the Agency upon request.

4. Prior to the training, the responsible person(s) conducting the exercise must notify the local fire department, fire marshal, or fire district and meet all applicable local ordinances and permitting requirements.

5. Persons conducting extinguisher training fires are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(c) Forest Fire Training. [RCW ((~~70.94.6546~~)) 70A.15.5180(4), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

A fire protection agency may conduct forest fire training fires consisting of only natural vegetation without a written permit.

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to forest fire training fires as listed below:

a. Forest fire training fires are exempt from the following:

i. (F)(2) Hauled Materials

ii. (F)(6) Containers

iii. (F)(8) Distances

iv. (F)(10) Burn Hours

v. (F)(11) Number of Piles

vi. (F)(12) Fuel Area

vii. (F)(13) Written Permits

viii. (F)(15) Areas Prohibited

b. Forest fire training fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(3) Curtailments

iii. (F)(4) Nuisance

iv. (F)(5) Burning Detrimental to Others

v. (F)(7) Extinguishing a Fire

vi. (F)(9) Landowner Permission

vii. (F)(14) Property Access

viii. (F)(16) Other Requirements

2. Grassland or wildland fires used for the purpose of forest fire training fires qualify as forest firefighting instruction fires. Grassland or wildland fires not used for the purpose of forest fire instruction fires shall be performed pursuant to Section 6.01

(D)(1)(e), Types of Firefighting Instruction Fires Not Listed Above.

3. Persons conducting forest fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(d) Structural Fire Training. [RCW 52.12.150(4), RCW ((~~70.94.6546~~)) 70A.15.5180(3), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

A fire protection agency may conduct structural fire training without a written permit provided all of the following requirements are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to structural fire training fires as listed below:

a. Structural fire training fires are exempt from the following:

i. (F)(1) Prohibited Materials (except as provided for in Section 6.01 (D)(1)(d)4.)

ii. (F)(2) Hauled Materials

iii. (F)(6) Containers

iv. (F)(8) Distances

v. (F)(10) Burn Hours

vi. (F)(11) Number of Piles

vii. (F)(12) Fuel Area

viii. (F)(13) Written Permits

ix. (F)(15) Areas Prohibited

b. Structural fire training fires must comply with the following:

- i. (F) (3) Curtailments
- ii. (F) (4) Nuisance
- iii. (F) (5) Burning Detrimental to Others
- iv. (F) (7) Extinguishing a Fire
- v. (F) (9) Landowner Permission
- vi. (F) (14) Property Access
- vii. (F) (16) Other Requirements

2. The owner and fire protection agency(ies) must meet the requirements in SRCAA Regulation I, Article IX - Asbestos Control Standards and Article X, Section 10.09 - Asbestos Project And Demolition Notification Waiting Period And Fees, prior to conducting the training. This includes clearly identifying structures on the Notice of Intent that will be used for structural fire training.

3. The fire protection agency(ies) conducting the fire training must have a fire training plan available to the Agency upon request, and the purpose of the structural fire must be to train firefighters.

4. Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile shall not be burned unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan. Materials removed from the structure(s) must be disposed of in a lawful manner prior to the training exercise.

5. Structural fire training shall not be conducted if, in consideration of prevailing air patterns, emissions from the fire are likely to cause a nuisance.

6. The fire protection agency(ies) conducting the training must provide notice to the owners of property adjoining the property on which the fire training will occur, to other persons who potentially will be impacted by the fire, and to additional persons if specifically directed by the Agency.

7. Structural fire training shall be performed in accordance with RCW 52.12.150.

8. Persons conducting structural fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(e) Types of Firefighting Instruction Fires Not Listed Above.
[WAC 173-425-020 (2) (f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2) (f) & (3-4)]

A fire protection agency may conduct firefighting instruction fires not provided for in Article VI, Section 6.01 (D) (1) (a-d) (e.g., car rescue training fires, simulated fires at permanent fire training facilities, simulated fires via mobile fire training units, etc.) if all of the following are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to other firefighting instruction fires as listed below:

a. Other firefighting training fires are exempt from the following:

- i. (F) (2) Hauled Materials
- ii. (F) (6) Containers
- iii. (F) (8) Distances
- iv. (F) (10) Burn Hours
- v. (F) (11) Number of Piles
- vi. (F) (12) Fuel Area
- vii. (F) (13) Written Permits

viii. (F)(15) Areas Prohibited
 b. Other firefighting training fires must comply with the following:

- 6.01 i. (F)(1) Prohibited Materials (except as provided for in Section (D)(1)(e)3.)
 ii. (F)(3) Curtailments
 iii. (F)(4) Nuisance
 iv. (F)(5) Burning Detrimental to Others
 v. (F)(7) Extinguishing a Fire
 vi. (F)(9) Landowner Permission
 vii. (F)(14) Property Access
 viii. (F)(16) Other Requirements

2. The fire protection agency(ies) conducting the fire training must have a fire training plan available to the Agency upon request, and the purpose of the structural fire must be to train firefighters.

3. The prohibited materials described in Article VI, Section 6.01 (F)(2) may not be burned in any fire unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan.

4. Persons conducting other firefighting training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(2) Fire Hazard Abatement Fires.

(a) A permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E) for fire hazard abatement fires. All fire hazard abatement fires require a written permit unless an alternate permitting method is specified in a written agreement (e.g., Memorandum of Understanding) between SRCAA and the permitting agency.

(b) Unless specifically authorized in writing by the permitting agency and pursuant to a written agreement between SRCAA and the permitting agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Fire hazard abatement fires may be exempt from the following at the permitting agency's discretion:

- i. (F)(8) Distances
 ii. (F)(11) Number of Piles
 iii. (F)(12) Fuel Area

2. Fire hazard abatement fires must comply with the following:

- i. (F)(1) Prohibited Materials
 ii. (F)(2) Hauled Materials
 iii. (F)(3) Curtailments
 iv. (F)(4) Nuisance
 v. (F)(5) Burning Detrimental to Others
 vi. (F)(6) Containers
 vii. (F)(7) Extinguishing a Fire
 viii. (F)(9) Landowner Permission
 ix. (F)(10) Burn Hours
 x. (F)(13) Written Permits
 xi. (F)(14) Property Access
 xii. (F)(15) Areas Prohibited
 xiii. (F)(16) Other Requirements

(3) Flag Retirement Ceremony Fires. [RCW ((~~70.94.6522~~))
70A.15.5060, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4)]

A flag retirement ceremony fire is a ceremonial fire for the purpose of disposing of cotton or wool flags of the United States of America, by fire, pursuant to 36 USC (~~(United States Code)~~) 176(k). A flag retirement ceremony fire is a type of other outdoor fire as provided for in WAC 173-425-030(15). The ceremony generally involves placing the flags one at a time in a small fire during the ceremony until the last flag is burned.

(a) Article VI, Section 6.01 (D) (3) serves as a general permit by the Agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to flag retirement ceremony fires as listed below:

1. Unless specifically authorized in writing by the Agency, flag retirement ceremony fires are exempt from the following:

- i. (F) (2) Hauled Materials
- ii. (F) (6) Containers
- iii. (F) (8) Distances
- iv. (F) (10) Burn Hours
- v. (F) (11) Number of Piles
- vi. (F) (12) Fuel Area
- vii. (F) (13) Written Permits
- viii. (F) (15) Areas Prohibited

2. Flag retirement ceremony fires must comply with the following:

i. (F) (1) Prohibited Materials (except for cotton or wool flags and minimal accelerant necessary to burn the flags)

- ii. (F) (3) Curtailments
- iii. (F) (4) Nuisance
- iv. (F) (5) Burning Detrimental to Others
- v. (F) (7) Extinguishing a Fire
- vi. (F) (9) Landowner Permission
- vii. (F) (14) Property Access
- viii. (F) (16) Other Requirements

(c) A ceremony for disposal of unserviceable cotton or wool flags using methods other than burning (e.g., burying or recycling) or burning a small number of representative cotton or wool flags for the flag retirement ceremony is recommended, but not required.

(d) Burning flags made of synthetic materials (e.g., nylon) is prohibited.

(4) Indian Ceremonial Fires. [RCW (~~(70.94.6550)~~) 70A.15.5200, WAC 173-425-020 (2) (h), WAC 173-425-030(8)), WAC 173-425-050, WAC 173-425-060 (1), (2) (h) & (3-4)]

Indian ceremonial fires are fires using charcoal or clean, dry, bare, untreated wood (for the purpose of this definition, it includes commercially manufactured fire logs) necessary for Native American Ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

(a) Article VI, Section 6.01 (D) (4) serves as a general permit by the Agency.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to Indian ceremonial fires as listed below:

1. Indian ceremonial fires are exempt from the following:

- i. (F) (2) Hauled Materials
- ii. (F) (6) (b) Containers
- iii. (F) (10) Burn Hours
- iv. (F) (13) Written Permits
- v. (F) (15) Areas Prohibited

2. Indian ceremonial fires must comply with the following:

- i. (F)(1) Prohibited Materials
- ii. (F)(3) Curtailments
- iii. (F)(4) Nuisance
- iv. (F)(5) Burning Detrimental to Others
- v. (F)(6)(a) Containers (burn barrels)
- vi. (F)(7) Extinguishing a Fire
- vii. (F)(8) Distances
- viii. (F)(9) Landowner Permission
- ix. (F)(11) Number of Piles
- x. (F)(12) Fuel Area
- xi. (F)(14) Property Access
- xii. (F)(16) Other Requirements

(5) Land Clearing Fires. [WAC 173-425-020 (2)(b), WAC 173-425-030(9), WAC 173-425-040 (1-5), WAC 173-425-050, WAC 173-425-060 (1)(b) and WAC 173-425-060 (1), (2)(b) & (3-4)]

(a) All land clearing burning, except for silvicultural-to-agricultural and residential land clearing burning, is prohibited effective January 13, 2002.

(b) Silvicultural-to-agricultural burning is prohibited after April 30, 2009.

(c) Residential land clearing burning is prohibited after December 31, 2010. Residential land clearing fires are limited to fires consisting of trees, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused) where the natural vegetation is cleared from less than one acre of forested land on a five (5) acre or larger parcel of land in non-commercial ownership. [RCW ((~~70.94.6526~~)) 70A.15.5080(2)]. Residential land clearing fires may also have the effect of abating or prevention of a forest fire hazard and thereby fit the definition of silvicultural burning. In those situations where residential land clearing burning consists of materials cleared from less than one (1) acre of forested land on a five (5) acre or larger parcel of land in non-commercial ownership is determined by DNR to meet the criteria to be defined as silvicultural burning, SRCAA may defer the decision to DNR to approve the fire and issue a permit pursuant to a Memorandum of Understanding between SRCAA and DNR. In so doing, DNR acknowledges that the fire is silvicultural burning and subject to Chapter 332-24 WAC.

(6) Rare and Endangered Plant Regeneration Fires. [RCW ((~~70.94.6524~~)) 70A.15.5070, RCW ((~~70.94.6534~~)) 70A.15.5120(2), WAC 173-425-020 (2)(g), WAC 173-425-030(19), WAC 173-425-050, WAC 173-425-060 (1), (2)(g), (3-4) & (6)]

Rare and endangered plant regeneration fires are fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in Chapter 79.70 RCW.

(a) Pursuant to RCW ((~~70.94.6534~~)) 70A.15.5120(2), the appropriate fire protection agency permits and regulates rare and endangered plant regeneration fires on lands where the department of natural resources does not have fire protection responsibility.

(b) Unless otherwise allowed or required by the fire protection agency, the prohibitions/requirements in Article VI, Section 6.01(F) apply to rare and endangered plant regeneration fires as listed below:

1. Rare and endangered plant regeneration fires are exempt from the following:

- i. (F)(8) Distances
- ii. (F)(10) Burn Hours
- iii. (F)(11) Number of Piles

- iv. (F) (12) Fuel Area
- v. (F) (13) Written Permits
- vi. (F) (15) Areas Prohibited

2. Rare and endangered plant regeneration fires must comply with the following:

- i. (F) (1) Prohibited Materials
- ii (F) (2) Hauled Materials
- iii. (F) (3) Curtailments
- iv. (F) (4) Nuisance
- v. (F) (5) Burning Detrimental to Others
- vi. (F) (6) Containers
- vii. (F) (7) Extinguishing a Fire
- viii. (F) (9) Landowner Permission
- ix. (F) (14) Property Access
- x. (F) (16) Other Requirements

(c) Pursuant to WAC 173-425-060(6), any agency that issues permits, or adopts a general permit for rare and endangered plant regeneration fires is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of Chapter 173-425 WAC unless another agency has agreed under WAC 173-425-060 (1) (a) to be responsible for certain field response or enforcement activities. Except for enforcing fire danger burn bans as referenced in WAC 173-425-050 (3) (a) (iii), the Agency may also perform complaint response and enforcement activities.

(7) Recreational Fires. [WAC 173-425-020 (2) (i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2) (i) & (3-4)]

A recreational fire is a small fire with a fuel area no larger than three (3) feet in diameter and two (2) feet in height and is limited to cooking fires, campfires, and fires for pleasure using charcoal or firewood in designated areas on public lands (e.g., campgrounds) or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned and has less than 20% moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels unless determined otherwise by the Agency. Fires fueled by liquid or gaseous fuels (e.g., propane or natural gas barbecues) are not considered recreational fires. Fires used for debris disposal are not considered recreational fires.

(a) This Article VI, Section 6.01 (D) (7) serves as a general permit by the Agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to recreational fires as listed below:

1. Recreational fires are exempt from the following:
 - i. (F) (2) Hauled Materials
 - ii. (F) (6) (b) Containers
 - iii. (F) (10) Burn Hours
 - iv. (F) (13) Written Permits
 - v. (F) (15) Areas Prohibited
2. Recreational fires must comply with the following:
 - i. (F) (1) Prohibited Materials
 - ii. (F) (3) Curtailments
 - iii. (F) (4) Nuisance
 - iv. (F) (5) Burning Detrimental to Others
 - v. (F) (6) (a) Containers (burn barrels)
 - vi. (F) (7) Extinguishing a Fire
 - vii. (F) (8) Distances
 - viii. (F) (9) Landowner Permission
 - ix. (F) (11) Number of Piles

- x. (F) (12) Fuel Area
- xi. (F) (14) Property Access
- xii. (F) (16) Other Requirements

(8) Residential Fires (also referred to as Residential Burning or Residential Yard and Garden Debris Burning). [WAC 173-425-020 (2) (a), WAC 173-425-030(22), WAC 173-425-040 (1-3) & (5), WAC 173-425-050, WAC 173-425-060 (1), (2) (a) & (3-6)]

A residential fire is an outdoor fire consisting of natural yard and garden debris (i.e., dry garden trimmings, dry tree clippings, dry leaves, etc.) originating on the maintained/improved area of residential property (i.e., lands immediately adjacent and in close proximity to a human dwelling), and burned on such lands by the property owner and/or any other responsible person.

(a) A permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E). All residential fires require a written permit unless an alternate permitting method (e.g., general permit adopted by rule) is specified in a written agreement (e.g., Memorandum of Understanding) between SRCAA and the permitting agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to residential fires as listed below:

1. No exemptions apply to residential fires.
2. Residential fires must comply with the following:
 - i. (F) (1) Prohibited Materials
 - ii. (F) (2) Hauled Materials
 - iii. (F) (3) Curtailments
 - iv. (F) (4) Nuisance
 - v. (F) (5) Burning Detrimental to Others
 - vi. (F) (6) Containers
 - vii. (F) (7) Extinguishing a Fire
 - viii. (F) (8) Distances
 - ix. (F) (9) Landowner Permission
 - x. (F) (10) Burn Hours
 - xi. (F) (11) Number of Piles
 - xii. (F) (12) Fuel Area (except as provided in Section 6.01

(D) (8) (c))

- xiii. (F) (13) Written Permits
- xiv. (F) (14) Property Access
- xv. (F) (15) Areas Prohibited
- xvi. (F) (16) Other Requirements

(c) The fuel area is limited to four (4) feet in diameter and three (3) feet in height unless the written permit issued by the permitting agency specifically states otherwise. Under no circumstances shall the fuel area be greater than ten (10) feet in diameter and six (6) feet in height.

(d) No vegetation shall exceed four (4) inches in diameter unless the permitting agency provides a site-specific exemption in a written permit. If larger diameter vegetation is allowed, the fire shall be constructed using heavy equipment such as a track hoe or excavator with an operator on site at all times. Fans must be employed to improve combustion.

(e) Residential fires must be at least five hundred (500) feet away from forest slash.

(f) Residential fires must be at least fifty (50) feet away from any adjacent land under different ownership unless the permitting agency provides a site-specific exception in the written permit and the respective neighboring landowner or landowner's designated repre-

sentative gives the person responsible for burning approval to burn within fifty (50) feet of his/her land.

(g) In addition to the prohibitions in Section 6.01(F)(15), residential burning is prohibited within any area where a permitting agency does not administer a residential burning program.

(9) Social Event Fires. [WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (4)]

A social event fire is a fire that may be greater than three (3) feet in diameter and two (2) feet in height and unless otherwise approved by the Agency, is limited to events or celebrations open to the general public. A social event fire is limited to using charcoal or firewood which occurs in designated areas on public lands or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned with less than 20% moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels. Fires used for debris disposal are not considered social event fires.

(a) A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) and, unless otherwise approved by the Agency, must be submitted at least ten (10) working days prior to the first proposed burn date.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Social event fires may be exempt from the following at the Agency's discretion:

- i. (F)(2) Hauled Materials
- ii. (F)(6)(b) Containers
- iii. (F)(8) Distances
- iv. (F)(10) Burn Hours
- v. (F)(11) Number of Piles
- vi. (F)(12) Fuel Area
- vii. (F)(15) Areas Prohibited

2. Social event fires must comply with the following:

- i. (F)(1) Prohibited Materials
- ii. (F)(3) Curtailments
- iii. (F)(4) Nuisance
- iv. (F)(5) Burning Detrimental to Others
- v. (F)(6)(a) Containers (burn barrels)
- vi. (F)(7) Extinguishing a Fire
- vii. (F)(9) Landowner Permission
- viii. (F)(13) Written Permits
- ix. (F)(14) Property Access
- x. (F)(16) Other Requirements

(10) Storm or Flood Debris Fires. [RCW ((~~70.94.6514~~)) 70A.15.5020(2), WAC 173-425-020 (2)(c), WAC 173-425-030(24), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(c) & (3-4)]

Storm and flood debris fires are fires consisting of natural vegetation deposited on lands by storms or floods that occurred within the previous twenty-four (24) months, and resulted in an emergency being declared or proclaimed in the area by city, county, or state government, and burned by the property owner or other responsible person on lands where the natural vegetation was deposited by the storm or flood.

(a) A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) and, unless otherwise approved by the Agency, an application for a storm or flood debris fire must be submitted at least ten (10) working days prior to the first proposed burn date.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Storm or flood debris fires may be exempt from the following at the Agency's discretion:

i. (F)(12) Fuel Area

2. Storm or flood debris fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(2) Hauled Materials

iii. (F)(3) Curtailments

iv. (F)(4) Nuisance

v. (F)(5) Burning Detrimental to Others

vi. (F)(6) Containers

vii. (F)(7) Extinguishing a Fire

viii. (F)(8) Distances

ix. (F)(9) Landowner Permission

x. (F)(10) Burn Hours

xi. (F)(11) Number of Piles

xii. (F)(13) Written Permits

xiii. (F)(14) Property Access

xiv. (F)(15) Areas Prohibited

xv. (F)(16) Other Requirements

(11) Tumbleweed Fires. [RCW (~~(70.94.6554)~~) 70A.15.5220]

Tumbleweed fires are fires to dispose of dry plants (e.g., Russian Thistle and Tumbleweed Mustard Plants) that have been broken off, and rolled about, by the wind. Outdoor burning of tumbleweeds is prohibited. However, agricultural operations may burn tumbleweeds pursuant to Article VI, Section 6.11 and Chapter 173-430 WAC.

(12) Weed Abatement Fires. [RCW (~~(70.94.6552)~~) 70A.15.5210, Chapter 16-750 WAC, WAC 173-425-020 (2)(e), WAC 173-425-030(27), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(e) & (3-4)]

A weed abatement fire is any outdoor fire undertaken for the sole purpose of disposing of noxious weeds identified in the state noxious weed list.

(a) A written permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E).

(b) The prohibitions/requirements in Section 6.01(F) apply to weed abatement fires as listed below:

1. Weed abatement fires may be exempt from the following at the permitting agency's discretion:

i. (F)(11) Number of Piles (refer to Section 6.01(D)(11)(c), below)

ii (F)(12) Fuel Area (refer to Section 6.01 (D)(11)(c), below)

2. Weed abatement fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(2) Hauled Materials

iii. (F)(3) Curtailments

iv. (F)(4) Nuisance

v. (F)(5) Burning Detrimental to Others

vi. (F)(6) Containers

vii. (F)(7) Extinguishing a Fire

viii. (F)(8) Distances

ix. (F)(9) Landowner Permission

x. (F)(10) Burn Hours

xi. (F)(13) Written Permits

xii. (F)(14) Property Access

xiii. (F)(15) Areas Prohibited

xiv. (F)(16) Other Requirements

(c) If burn piles are required by the permitting agency, the fuel area for each burn pile is limited to ten (10) feet in diameter and six (6) feet in height unless the written permit issued by the permitting agency specifically states otherwise.

(d) Burning shall be limited to Monday through Friday and shall not be conducted on federally observed holidays.

(13) Other Outdoor Fires. [RCW ((70.94.6522)) 70A.15.5060, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4)]

Other outdoor fires are any type of outdoor fires not specified in WAC 173-425-020 (2)(a-i).

(a) Other outdoor burning will generally be limited by the Agency to outdoor fires necessary to protect public health and safety.

(b) Other outdoor burning will generally not be allowed unless the Agency determines that extenuating circumstances exist that necessitate burning be allowed.

(c) A permit application must be submitted at least ten (10) working days prior to the first proposed burn date unless the Agency waives the advance application period. A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) unless the Agency approves a verbal or electronic permit in lieu of a written permit. The applicant is responsible for payment of a permit application fee in the amount specified in Article X, Section 10.13.

(E) Application For and Permitting of Written Outdoor Burning Permits. Outdoor burning requiring a written permit pursuant to Article VI, Section 6.01(D) is subject to all of the following requirements:

(1) Permit Application.

(a) It shall be unlawful for any person to cause or allow outdoor burning unless an application for a written permit, including the required fee specified by the permitting agency (SRCAA's outdoor burning permit fees are specified in SRCAA's ((the)) Consolidated Fee Schedule pursuant to Article X, Section 10.13) and any additional information requested by the permitting agency, has been submitted to the permitting agency on approved forms, in accordance with the advance application period as specified by the permitting agency.

(b) Incomplete or inaccurate applications may be returned to the applicant ((as incomplete)). The advance application period begins when a complete and accurate application, including the required fee, has been received by the permitting authority.

(c) Unless otherwise approved by the permitting agency or unless specified otherwise in Section 6.01, applications will be accepted no more than ninety (90) days prior to the first proposed burn date.

(d) A separate application must be completed and submitted to the appropriate permitting agency for each outdoor burn permit requested.

(e) A permit for outdoor burning shall not be granted on the basis of a previous permit history.

(2) Denial or Revocation of a Permit.

(a) The permitting agency may deny a permit if it is determined by the permitting agency that the application is incomplete or inaccurate. The advance application period in Article X, Section 10.13 does not begin until a complete and accurate application, including any additional information requested by the permitting agency, is received by the permitting agency.

(b) The permitting agency may deny a permit or revoke a previously issued permit if it is determined by the permitting agency that the application contained inaccurate information, or failed to contain

pertinent information, and the information is deemed by the permitting agency to be significant enough to have a bearing on the permitting agency's decision to grant a permit.

(c) An application for a permit shall be denied if the permitting agency determines that the proposed burning will cause or is likely to cause a nuisance (refer to Article VI, Section 6.01 (F)(4)). In making this determination, the permitting agency may consider if the permit can be conditioned in such a way that burning is not likely to cause a nuisance (e.g., limit burning to specific wind directions, restrict burn hours, restrict pile size, etc.).

(d) The permitting agency may deny a permit for other reasons and shall provide the reason(s) in the applicant's permit denial.

(3) Permit Conditions. Permits may include requirements and restrictions beyond those specified in SRCAA Regulation I.

(4) Permit Expiration. Written permits shall be valid for no more than thirty (30) consecutive calendar days unless specified otherwise in Section 6.01(D) or in the permit. In no circumstance will a permit be valid for more than one calendar year.

(F) Prohibitions/Requirements. [WAC 173-425-050 & WAC 173-425-060(4)]

All of the following apply to all outdoor burning unless specified otherwise in Article VI, Section 6.01 or pursuant to a written permit:

(1) Prohibited Materials. [WAC 173-425-050(1)]

It is unlawful to burn prohibited materials. Prohibited materials include all of the following: garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated or processed wood (other than commercially manufactured fire logs), construction and demolition debris (any material resulting from the construction, renovation, or demolition of buildings, roads, or other (~~man-made~~) man-made structures), metal, or any substance (other than natural vegetation or firewood) that releases dense smoke or obnoxious odors when burned, or normally releases toxic emissions when burned. (RCW ((~~70.94.6512~~)) 70A.15.5010(1) and Attorney General Opinion 1993 #17).

(2) Hauled Materials. [WAC 173-425-050(2)]

It is unlawful for a fire to contain material that has been hauled from an area where outdoor burning of that material is prohibited.

(3) Curtailments. [RCW ((~~70.94.6512~~)) 70A.15.5010, RCW ((~~70.94.6516~~)) 70A.15.5030, WAC 173-425-030(2), WAC 173-425-030(7), WAC 173-425-050(3), WAC 173-425-060(4) & WAC 173-433-140)]

(a) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day prior to igniting a fire.

(b) Outdoor burning is prohibited in specified geographical areas when one or more of the following occur:

1. The Washington State Department of Ecology (Ecology) has declared an air pollution episode.

2. Ecology or SRCAA has declared impaired air quality.

3. A fire protection authority with jurisdiction has declared a fire danger burn ban, unless that authority grants an exception.

(c) The person responsible for outdoor burning must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning is declared. In this regard:

1. Smoke visible from all types of outdoor burning, except residential land clearing burning, after a time period of three (3) hours

has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

2. Smoke visible from residential land clearing burning after a time period of eight (8) hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(4) Nuisance. [RCW ((~~70.94.030~~)) 70A.15.1030(2) & WAC 173-425-050(4)]

A nuisance refers to an emission of smoke or any other air contaminant that unreasonably interferes with the enjoyment of life and property. In addition to applicable odor nuisance regulations in Article VI, Section 6.04, it shall be unlawful for any person to conduct outdoor burning which causes a smoke or particulate nuisance. With respect to smoke or particulate from outdoor burning, the Agency may take enforcement action under Section 6.01 if the Control Officer or authorized representative has documented all of the following:

(a) Visible smoke observed with natural or artificial light (e.g., flashlight) crossing the property line of the person making a complaint or particulate deposition on the property of the person making a complaint;

(b) An affidavit from a person making a complaint which demonstrates that they have experienced air contaminant emissions in sufficient quantities, and of such characteristics and duration, so as to unreasonably interfere with their enjoyment of life and property; and

(c) The source of the smoke or particulate.

(5) Burning Detrimental to Others. [RCW ((~~70.94.040~~)) 70A.15.1070, RCW ((~~70.94.6528~~)) 70A.15.5090(1), RCW ((~~70.94.6516~~)) 70A.15.5030, and WAC 173-425-050(4)]

It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, or that causes damage to property or business.

(6) Containers. [WAC 173-425-050(5)]

(a) Burn barrels are prohibited.

(b) Containers must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings no larger than one-half (0.5) inch.

(7) Extinguishing a Fire. [WAC 173-425-050 (6) (a) & WAC 173-425-060(4)]

(a) A person(s) capable of completely extinguishing the fire must attend it at all times.

(b) Fire extinguishing equipment must be at the fire and ready to use (e.g., charged garden hose, dirt, sand, water bucket, shovel, fire extinguisher, etc.).

(c) All fires must be completely extinguished when the fire will be left unattended or when the activity for which the fire was intended is done, whichever occurs first.

(d) Any person(s) responsible for unlawful outdoor burning must immediately and completely extinguish the fire. If the person(s) responsible for unlawful outdoor burning are unable or unwilling to extinguish an unlawful fire, they may be charged for fire suppression costs incurred by a fire protection agency.

(8) Distances. [WAC 173-425-050 (6) (b) & WAC 173-425-060(4)]

(a) All fires subject to Article VI, Section 6.01 must be at least fifty (50) feet away from any structure.

(b) When material is burned on the ground, it must be placed on bare soil, green grass, or other similar area free of flammable materials for a distance adequate to prevent escape of the fire.

(9) Landowner Permission. [WAC 173-425-050 (6)(c)]

Permission from a landowner, or owner's designated representative, must be obtained before outdoor burning on landowner's property.

(10) Burn Hours. [WAC 173-425-060(4)]

All burning must take place during daylight hours only. Burning shall not commence prior to sunrise, and all debris burning must be completely extinguished at least one hour prior to sunset. Smoke visible from burning within one hour after ((of)) sunset will constitute prima facie evidence of unlawful outdoor burning.

(11) Number of Piles. [WAC 173-425-060 (5)(c)(x)]

Only one (1) pile at a time may be burned on contiguous parcels of property under same ownership. The pile must be extinguished before lighting another.

(12) Fuel Area. [WAC 173-425-060(4)]

The fuel area shall be no larger than three (3) feet in diameter by two (2) feet in height.

(13) Written Permits.

(a) A copy of the written permit must be kept at the permitted burn site during the permitted burn, and must be made available for review upon request of the permitting agency.

(b) All conditions of a written permit issued by the permitting agency must be complied with.

(14) Property Access. [RCW ((70.94.200)) 70A.15.2500 & SRCAA Regulation I, Article II]

The Control Officer, or authorized representative, shall be allowed to access property at reasonable times to inspect fires specific to the control, recovery, or release of contaminants into the atmosphere in accordance with Article II and RCW ((70.94.200)) 70A.15.2500. For the purposes of outdoor burning, reasonable times include, but are not limited to, any of the following: when outdoor burning appears to be occurring, when the Control Officer or authorized representative is investigating air quality complaints filed with the Agency, and/or there is reason to believe that air quality violations have occurred or may be occurring. No person shall obstruct, hamper, or interfere with any such inspection.

(15) Areas Prohibited. [WAC 173-425-040]

Outdoor burning is prohibited in all of the following areas:

(a) Within the Restricted Burn Area (also referred to as the No Burn Area), as defined by Resolution of the Board of Directors of SRCAA.

(b) Within any Urban Growth Area (land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030), and with the exception of Fairchild Air Force Base, any area completely surrounded by any Urban Growth Area (e.g., "islands" of land within an Urban Growth Area).

(c) Within any nonattainment area or former nonattainment area.

(d) In any area where a reasonable alternative to burning exists for the area where burning is requested. For burning organic refuse, a reasonable alternative is considered one where there is a method for disposing of the organic refuse at a cost that is less than or equivalent to the median of all county tipping fees in the state for disposal of municipal solid waste. SRCAA shall determine the median of all

county tipping fees in the state for disposal of municipal solid waste by obtaining the most recent solid waste tipping fees data available from Ecology (e.g., state profile map of Washington solid waste tipping fees available at <https://fortress.wa.gov/ecy/swicpublic>) or other relevant sources. Reasonable alternatives may include, but are not limited to, solid waste curbside pick-up, on-site residential composting or commercial composting operations, public or private chipping/grinding operations, public or private chipper rental service, public or private hauling services, energy recovery or incineration facility, public or private solid waste drop box, transfer station, or landfill.

(16) Other Requirements. All outdoor burning must comply with all other applicable local, state, and federal requirements.

(G) Unlawful Outdoor Burning.

(1) Failure of any person to comply with Chapter ((70.94)) 70A.15 RCW, Chapter 173-425 WAC, this Section, or permit conditions, shall be unlawful and may result in criminal or civil enforcement action taken, including penalties.

(2) Unlawful burning may result in any outdoor burning permit being permanently rescinded. This applies to written permits, general permits (permits by rule), and electronic and verbal permits. Once a permit is rescinded, new permit approval from the Agency must be obtained to burn again. Applicable fees for a new permit must be paid pursuant to Article X, Section 10.13.

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

SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY

(A) Definitions. All definitions in SRCAA Regulation I, Article I, Section 1.04 apply to Article VI, Section 6.04, unless otherwise defined herein.

(B) Applicability. The Agency adopts by reference WAC 173-400-040 in Spokane County, except WAC 173-400-040(6), which is replaced by 6.04(C) and WAC 173-400-040(8), which is replaced by Section 6.07. In addition to WAC 173-400-040, the provisions of Section 6.04 apply. The provisions of RCW ((70.94.640)) 70A.15.4530 are herein incorporated by reference.

(C) Emissions Detrimental to Persons or Property. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:

(1) Injurious to the health or safety of human, animal, or plant life;

(2) Injurious or cause damage to property; or

(3) Which unreasonably interferes with enjoyment of life and property.

(D) Odors. With respect to odor, the Agency may take enforcement action, pursuant to Chapter ((70.94)) 70A.15 RCW, under this section if the Control Officer or authorized representative has documented all of the following:

(1) The detection by the Control Officer or authorized representative of an odor at a Level 2 or greater, according to the following odor scale:

(a) Level 0 - no odor detected,

(b) Level 1 - odor barely detected,

(c) Level 2 - odor is distinct and definite, any unpleasant characteristics recognizable,

(d) Level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance, and

(e) Level 4 - odor is so strong that a person does not want to remain present.

(2) An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and

(3) The source of the odor.

(E) Odor Violation. With respect to odor, the Agency will determine whether or not a violation of Article VI, Section 6.04(C) has occurred based on its review of the information documented under Section 6.04(D), as well as any other relevant information obtained during the investigation.

(F) Enforcement Action. When determining whether to take formal enforcement action authorized in Section 6.04 (D) and (E) above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the Agency may decline to pursue formal enforcement action.

(G) Documentation. The Agency will document all the criteria used in making its determination in Section 6.04(F) above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW ((70.94.205)) 70A.15.2510, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.

(H) Cause of Action or Legal Remedy. Nothing in Section 6.04 shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

AMENDATORY SECTION

SECTION 6.11 AGRICULTURAL BURNING

(A) Adoption by Reference. In addition to SRCAA Regulation I, Article VI, Section 6.11, the Agency adopts by reference Chapter 173-430 WAC. The more stringent requirement in Chapter 173-430 or Section 6.11 supersedes the lesser.

(B) Purpose. The primary purpose of Section 6.11 is to establish specific requirements for agricultural burning in Spokane County, consistent with Chapter 173-430 WAC.

(C) Applicability. Section 6.11 applies to agricultural burning in all areas of Spokane County unless specifically exempted. Section

6.11 does not apply to Silvicultural Burning (see Chapter 332-24 WAC) or to Outdoor Burning (see Chapter 173-425 WAC).

(D) Statement of Authority. The Spokane Regional Clean Air Agency is empowered, pursuant to Chapter ((70.94)) 70A.15 RCW, to administer the agricultural burning program in Spokane County. Included is the authority to:

- (1) Issue and deny burning permits;
- (2) Establish conditions on burning permits to ensure that the public interest in air, water, and land pollution, and safety to life and property is fully considered;
- (3) Determine if a request to burn is consistent with best management practices, pursuant to WAC 173-430-050; or qualifies for a waiver, pursuant to WAC 173-430-045;
- (4) Delegate local administration of permit and enforcement programs to certain political subdivisions;
- (5) Declare burn days and no-burn days, based on meteorological, geographical, population, air quality, and other pertinent criteria; and
- (6) Restrict the hours of burning, as necessary to protect air quality.

(E) Definitions. Unless a different meaning is clearly required by context, words and phrases used in Section 6.11 shall have the following meaning:

(1) *Agricultural Burning* means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW ((70.94.6528)) 70A.15.5090 or other authoritative source on agricultural practices.

(2) *Authority* means the Spokane Regional Clean Air Agency (SRCAA or Agency).

(3) *Episode* means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as provided in Chapter 173-435 WAC.

(4) *Extreme Conditions* means conditions, usually associated with a natural disaster, that prevent the delivery and placement of mechanical residue management equipment on the field and applies only to the growing of field and turf grasses for seed, for which a waiver is requested.

(5) *Impaired Air Quality*, for purposes of agricultural burning, means a condition declared by the Agency when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria:

(a) Particulates that are ten (10) microns or smaller in diameter (PM₁₀) are measured at any location inside Spokane County at or above an ambient level of sixty (60) micrograms per cubic meter of air, measured on a 24-hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix J, or equivalent.

(b) Carbon monoxide is measured at any location inside Spokane County at or above an ambient level of eight (8) parts of contaminant per million parts of air by volume (ppm), measured on an eight (8) hour average by a method which has been determined by Ecology or the

Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix C, or equivalent.

(c) Particulates that are two and one-half (2.5) microns or smaller in diameter (PM_{2.5}) are measured at any location inside Spokane County at or above an ambient level of fifteen (15) micrograms per cubic meter of air, measured on a twenty-four (24) hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix L, or equivalent.

(d) Air contaminant levels reach or exceed other limits, established by Ecology pursuant to RCW ((~~70.94.331~~) 70A.15.3000.

(6) *Nuisance* means an emission of smoke or other emissions from agricultural burning that unreasonably interferes with the use and enjoyment of property or public areas.

(7) *Permitting Authority* means the Spokane Regional Clean Air Agency (Agency), or one or more of the following entities, whenever the Agency has delegated administration of the permitting program, pursuant to RCW ((~~70.94.6530~~) 70A.15.5100, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, the Spokane County Conservation District, or any fire protection agency within Spokane County.

(8) *Pest* means weeds, disease, or insects infesting agricultural lands, crops, or residue.

(9) *Prohibited Materials* means garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, demolition debris, metal or any substance (other than natural vegetation) that releases toxic emissions, dense smoke or obnoxious odors, when burned.

(10) *Responsible Person* means any person who has applied for and received a permit for agricultural burning, or any person allowing, igniting or attending to agricultural burning, or any person who owns or controls property on which agricultural burning occurs.

(F) Requirements. No person shall practice or permit the practice of Agricultural Burning, other than incidental agricultural burning pursuant to RCW ((~~70.94.6524~~) 70A.15.5070(7), unless the applicant demonstrates to the satisfaction of the Agency or permitting authority that burning, as requested:

(1) Is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; or

(2) Constitutes a best management practice and no practical alternative is reasonably available.

(G) Prohibitions. No person shall practice or permit the practice of agricultural burning in any of the following circumstances:

(1) Where there is a practice, program, technique, or device, that Ecology has certified as a practical alternative to burning.

(2) When the materials to be burned include any prohibited materials.

(3) During an episode, as declared by Ecology, or during Impaired Air Quality, as declared by Ecology or the Agency for a defined geographical area.

(4) Where burning causes a nuisance or when the Agency or permitting authority determines that the creation of a nuisance would likely result from burning.

(5) Without a written permit, issued by the permitting authority, except for incidental agricultural burning, as provided in RCW (~~(70.94.6524)~~) 70A.15.5070(7).

(6) When the materials to be burned include any material other than natural vegetation generated on the property, which is the burning site, or was transported to the burning site by wind or water.

(7) In the case of growing of field or turf grasses for seed, unless the request to burn qualifies for a waiver for slope or extreme conditions pursuant to WAC 173-430-045(4).

(8) When a no-burn day is declared by the Agency or the permitting authority.

(H) General Conditions. Considering population density and local conditions affecting air quality, the Agency or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may address permissible hours of burning, maximum daily burn acreage or volume of material to be burned, requirements for good combustion practice, burning under specified weather conditions, pre and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Any person who practices or permits the practice of agricultural burning shall, in addition to any specific permit conditions imposed, comply with the general agricultural burning permit conditions and criteria in WAC 173-430-070 and all of the following conditions:

(1) Whenever an episode or Impaired Air Quality is declared, or other meteorological condition occurs that the permitting authority determines is likely to contribute to a nuisance, all fires shall be extinguished by withholding new fuel or ceasing further ignition, as appropriate, to allow the fire to burn down in the most expeditious manner. In no case shall a fire be allowed to burn longer than three (3) hours after declaration of an episode or Impaired Air Quality, or determination of the specific meteorological condition.

(2) Until extinguished, the fire shall be attended by a person who is responsible for the same, capable of extinguishing the fire, and has the permit or a copy of the permit in his or her immediate possession.

(3) Burning shall occur only during daylight hours, or a more restrictive period as determined by the Agency or the permitting authority.

(4) Permission from the landowner, or the landowner's designated representative, must be obtained before starting the fire.

(5) The fire district having jurisdiction shall be notified by the responsible person, prior to igniting a fire.

(6) If it becomes apparent at any time to the Agency or permitting authority that limitations need to be imposed to reduce smoke, prevent air pollution and/or protect property and the health, safety and comfort of persons from the effects of burning, the Agency or permitting authority shall notify the permittee or responsible person and any limitation so imposed shall become a condition under which the permit is issued.

(7) Follow the smoke management guidelines of the permitting authority.

(I) Administrative Requirements.

(1) All applicants for agricultural burning permits must submit their requests to burn, on forms or in a format provided by the permitting authority.

(2) The permitting authority may require additional information from the applicant, as necessary to determine if agricultural burning is reasonably necessary to carry out the enterprise, to determine how best to minimize air pollution, and as necessary to compile information for the annual program summary [Section 6.11 (K) (10)].

(3) The permitting authority may deny an application or revoke a previously issued permit if it is determined by the permitting authority that the application contained inaccurate information, or failed to contain pertinent information, which information is deemed by the permitting authority to be significant enough to have a bearing on the permitting authority's decision to grant a permit.

(4) All applicants for agricultural burning permits shall pay a fee at the time of application, according to the Consolidated Fee Schedule, established by resolution of the permitting authority. When the permitting authority is ((the)) SRCAA (~~Spokane Regional Clean Air Agency~~), the fee shall be according to the schedule in Regulation I, Article X.

(5) No permit for agricultural burning shall be granted on the basis of a previous permit history.

(6) The permitting authority may waive or reduce the sixty (60) and thirty (30) day advance requirements for submitting and completing a waiver request, made pursuant to WAC 173-430-045(5), if the permitting authority determines that an alternate advance period will suffice for evaluating the request.

(J) Responsibilities of Farmers. In order to make the required showing, referenced in Section 6.11(F), a farmer, as defined in WAC 173-430-030(7), is responsible for providing the following to the permitting authority, if applicable:

(1) Advance notice of the potential need to burn, including documentation of pest problems, which if possible, shall be given prior to crop maturity.

(2) For pest management burning requests, a plan establishing how a recurring pest problem will be addressed through non-burning management practices by the following year, if possible, but by no later than three (3) years.

(3) An evaluation of alternatives to burning, including those successfully and customarily used by other farmers in similar circumstances, with particular attention to alternatives customarily used in Spokane County, which evaluation shall include an explanation as to why the alternatives are unreasonable and burning is necessary.

(4) A showing as to how burning will meet the applicable crop-specific or general Best Management Practices, established pursuant to RCW (~~70.94.6528~~) 70A.15.5090.

(5) For residue management burn requests, a showing that the residue level meets the permitting authority's criteria for consideration of a residue management burn.

(6) For residue management burn requests, a showing that non-burning alternatives would limit attaining the desired level of water infiltration/retention, soil erodibility, seed/soil contact, seeding establishment or other desirable agronomic qualities.

(7) Field access to representatives of the permitting authority.

(K) Responsibilities of Permitting Authorities. Permitting authorities are responsible for performing the following activities:

(1) Evaluation of individual permit applications to determine whether the applicant has made the required showing, referenced in Section 6.11(F).

(2) Consultation with a trained agronomist on individual permit applications, as necessary, to evaluate the need to burn and non-burning alternatives.

(3) Field inspection, as necessary to verify the following:

(a) Accuracy of information in permit and waiver applications,

(b) Compliance with permit conditions and applicable laws and regulations, and

(c) Acreage and materials burned.

(4) Taking final action on permit applications within seven (7) days of the date the application is deemed complete.

(5) Incorporation of appropriate permit conditions, both general and specific, as referenced in Section 6.11(H) in order to achieve the following:

(a) Minimizing air pollution and emissions of air pollutants, and

(b) Ensuring that the public interest in air, water, and land pollution, and safety to life and property has been fully considered, in accordance with RCW ((~~70.94.6528~~) 70A.15.5090).

(6) Enforcement and compliance efforts, with the goal of assuring compliance with all applicable laws, regulations, and permit conditions, and ensuring that timely and appropriate enforcement actions are commenced, when violations are discovered.

(7) Complaint logging and appropriate level of response.

(8) Collection of fees.

(9) Declaration of burn days and no-burn days, taking into consideration, at a minimum, the following criteria:

(a) Local air quality and meteorological conditions;

(b) Time of year when agricultural burning is expected to occur;

(c) Acreage/volume of material expected to be burned per day and by geographical location;

(d) Proximity of burn locations to roads, homes, population centers, and public areas;

(e) Public interest and safety; and

(f) Risk of escape of fire onto adjacent lands, during periods of high fire danger.

(10) Development of smoke management guidelines, that include procedures to minimize the occurrence of nuisance, and to facilitate making burn/no burn decisions.

(11) Dissemination of burn decisions, as necessary to inform responsible persons and the public.

(12) Compilation of an annual program summary, which at a minimum, includes the following:

(a) Permits and acres approved for burning;

(b) Permit/waiver requests and acres denied;

(c) Number and dates of complaints received; and

(d) Number of documented violations.

(L) Compliance. The responsible person is expected to comply with all applicable laws and regulations. Compliance with Section 6.11 does not ensure that agricultural burning complies with other applicable laws and regulations implemented by any other authority or entity.

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

AMENDATORY SECTION

SECTION 8.01 PURPOSE

((~~This article~~)) Article VIII establishes emission standards, certification standards and procedures, curtailment rules, and fuel

restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter (PM_{2.5}) and to further the policy of the Agency as stated in SRCAA Regulation I, Article I, Section 1.01 (~~(of this Regulation)~~).

AMENDATORY SECTION

SECTION 8.02 APPLICABILITY

The provisions of (~~(this article)~~) Article VIII apply to solid fuel burning devices in all areas of Spokane County.

AMENDATORY SECTION

SECTION 8.03 DEFINITIONS

(A) Unless a different meaning is clearly required by context, words and phrases used in (~~(this article)~~) Article VIII shall have the following meaning:

~~(A-)~~ (1) *Agency* means the Spokane Regional Clean Air Agency.

~~(B-)~~ (2) *Coal stove* means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has all the following characteristics:

~~(1-)~~ (a) An opening for loading coal which is located near the top or side of the appliance; and

~~(2-)~~ (b) An opening for emptying ash which is located near the bottom or the side of the appliance; and

~~(3-)~~ (c) A system which admits air primarily up and through the fuel bed; and

~~(4-)~~ (d) A grate or other similar device for shaking or disturbing the fuel bed; and

~~(5-)~~ (e) Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes; and

~~(6-)~~ (f) Not configured or capable of burning cordwood.

~~(C-)~~ (3) *Commercial establishment* is defined to include an establishment possessing a valid business license issued by a governmental entity.

~~(D-)~~ (4) *Cook stove* means an appliance designed with the primary function of cooking food and containing an integrally built in oven with a volume of one (1) cubic foot or greater where the cooking surface measured in square inches or square feet is one and one-half times greater than the firebox measured in cubic inches or cubic feet (e.g. a firebox of two (2) cubic feet would require a cooking surface of at least three (3) square feet). It must have an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cook stove. A portion of at least four sides of the oven must be exposed to the flame path during the oven heating cycle, while a flue gas bypass will be permitted for temperature control. Devices designed or advertised as room heaters that also bake or cook do not qualify as cook stoves.

~~(E-)~~ (5) *Ecology* means the Washington State Department of Ecology.

(6) *Emergency Power Outage* means any natural or human-caused event beyond the control of a person that leaves the person's residence or commercial establishment temporarily without an adequate source of heat other than the solid fuel burning device; or a natural

or human-caused event for which the governor declares an emergency in an area under RCW 43.06.010(12). Emergency power outage ends once power is restored by the utility provider.

((F-)) (7) EPA means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.

((G-)) (8) EPA Certified means a woodstove certified and labeled by EPA under ((M))40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters((M))

((H-)) (9) Fireplace means a permanently installed masonry fireplace; or a factory-built solid fuel burning device designed to be used with an air-to-fuel ratio greater than or equal to thirty-five to one and without features to control the inlet air-to-fuel ratio other than doors or windows such as may be incorporated into the fireplace design for reasons of safety, building code requirements, or aesthetics.

((I-)) (10) National Ambient Air Quality Standards (NAAQS; 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards) means outdoor air quality standards established by the United States Environmental Protection Agency under authority of the federal Clean Air Act. EPA set standards for six principal air pollutants, called "criteria" pollutants, under the NAAQS. The criteria pollutants are carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, ozone and particulate matter (PM_{2.5} and PM₁₀).

((J-)) (11) Non-affected pellet stove means that a pellet stove has an air-to-fuel ratio equal to or greater than 35:1 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in ((M))40 ((C.F.R.)) CFR Part 60, Appendix A, Method 28A Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances ((~~REFERENCE METHOD 28A - MEASUREMENT OF AIR TO FUEL RATIO AND MINIMUM ACHIEVABLE BURN RATES FOR WOOD-FIRED APPLIANCES~~)) as amended through July 1, 1990.

((K-)) (12) Nonattainment Area means a clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet, or it affects ambient air quality in a nearby area that does not meet, a national ambient air quality standard or standards for one or more of the criteria pollutants defined in 40 CFR Part 50, National Primary and Secondary Ambient Air Quality Standards.

((L-)) (13) Oregon Certified means a woodstove manufactured prior to 1989 which meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with ((M))Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification((M)) dated November 1984.

((M-)) (14) PM_{2.5} or Fine Particulate Matter means particulate matter with a nominal aerodynamic diameter of two and one half (2.5) micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air. ((~~Also called fine particulate matter.~~))

((N-)) (15) PM₁₀ means particulate matter with a nominal aerodynamic diameter of ten (10) micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air.

~~((1.))~~ (a) An air-to-fuel ratio in the combustion chamber averaging less than 35:1 as determined by EPA ~~((Reference))~~ Method 28A Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances; and

~~((2.))~~ (b) A useable firebox volume of less than twenty (20) cubic feet; and

~~((3.))~~ (c) A minimum burn rate less than 5 kg/hr as determined by EPA ~~((Reference))~~ Method 28 Certification and Auditing of Wood Heaters; and

~~((4.))~~ (d) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

AMENDATORY SECTION

SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The Agency adopts Chapter 173-433 WAC Solid Fuel Burning Devices by reference and ~~((Title))~~ 40 CFR~~((7))~~ Part 60, Subpart AAA ~~((of the Code of Federal Regulations))~~ ~~(())~~ Standards of Performance for New Residential Wood Heaters~~(())~~ by reference.

AMENDATORY SECTION

SECTION 8.05 OPACITY STANDARDS

~~((A.))~~ (A) Opacity Limit. A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of ~~((twenty percent))~~ 20% opacity for six (6) consecutive minutes in any one (1)~~((-))~~ hour period.

~~((B.))~~ (B) Test Method and Procedures. EPA ~~((reference))~~ Reference ~~((method))~~ Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources - shall be used to determine compliance with Section 8.05~~((A))~~ (A).

~~((C.))~~ (C) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity limit shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty (20) minutes in any four (4) ~~((-))~~ hour period.

AMENDATORY SECTION

SECTION 8.06 PROHIBITED FUEL TYPES

(A) Prohibited Materials. A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

- ~~((A.))~~ (1) Garbage;
- ~~((B.))~~ (2) Treated wood (defined in Section 8.03);
- ~~((C.))~~ (3) Plastic products;
- ~~((D.))~~ (4) Rubber products;
- ~~((E.))~~ (5) Animals;
- ~~((F.))~~ (6) Asphaltic products;

- ~~((G.))~~ (7) Waste petroleum products;
- ~~((H.))~~ (8) Paints;
- ~~((I.))~~ (9) Any substance, other than properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal stove, which normally emits dense smoke or obnoxious odors; or
- ~~((J.))~~ (10) Paper, other than an amount of non-colored paper necessary to start a fire.

AMENDATORY SECTION

SECTION 8.07 CURTAILMENT (BURN BAN)

~~((A.))~~ (A) Curtailment. Except as provided in Section 8.08, no person shall operate a solid fuel burning device within a defined geographical area under any of the following conditions:

~~((1.))~~ (1) Air Pollution Episode. Whenever Ecology has declared curtailment under an alert, warning, or emergency air pollution episode for the geographical area pursuant to Chapter 173-435 WAC and RCW ~~((70.94.715))~~ 70A.15.6010.

~~((2.))~~ (2) Stage 1 Burn Ban. Whenever the Agency has declared curtailment under a first stage of impaired air quality for the Smoke Control Zone or other geographical area unless the solid fuel burning device is one of the following: a ~~((A.))~~ nonaffected pellet stove; or ~~((b.))~~ a Washington Certified Device; or ~~((c.))~~ an EPA Certified Woodstove; or ~~((d.))~~ an Oregon Certified Woodstove.

(a) In Spokane County as allowed by RCW ~~((70.94.473))~~ 70A.15.3580 (1)(b)(i) a first stage of impaired air quality is reached and curtailment may be declared when the Agency determines that particulate matter with a nominal aerodynamic diameter of two and one half (2.5) micrometers and smaller (PM_{2.5}), measured as an ambient mass concentration at any location within Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, and updated hourly as a twenty-four (24) hour running average, is likely to exceed thirty-five (35) micrograms per cubic meter of air within forty-eight (48) hours based on forecasted meteorological conditions.

~~((3.))~~ (3) Stage 2 Burn Ban. Whenever the Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County as allowed by RCW ~~((70.94.473))~~ 70A.15.3580 (1)(c)(ii) a second stage of impaired air quality is reached and curtailment may be declared whenever all of the following criteria are met:

~~((a.))~~ (a) Issuing a Stage 2 Burn Ban Following a Stage 1 Burn Ban.

~~((1.))~~ 1. A first stage of impaired air quality has been in force for a period of twenty-four (24) hours or longer and, in the Agency's judgment, has not reduced the PM_{2.5} ambient mass concentration, measured as a twenty-four (24) hour running average, sufficiently to prevent it from exceeding thirty-five (35) micrograms per cubic meter of air at any location inside Spokane County within twenty-four (24) hours; and

~~((2.))~~ 2. A twenty-four (24) hour running average PM_{2.5} ambient mass concentration equal to or greater than twenty-five (25) micrograms per cubic meter of air is measured at any location inside Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR ~~((Title))~~ 40 Part 50 Appendix L, or equivalent; and

~~(3)~~) 3. The Agency does not expect meteorological conditions to allow ambient mass concentrations of PM_{2.5} measured as a twenty-four (24) hour running average to decline below twenty-five (25) micrograms per cubic meter of air for a period of twenty-four (24) hours or more from the time that it is measured at that concentration.

~~(b-)~~) (b) Issuing a Stage 2 Burn Ban Without First Declaring a Stage 1 Burn Ban.

1. A second stage burn ban may be issued without an existing first stage burn ban as allowed by RCW ~~((70.94.473))~~ 70A.15.3580

(1) (c) (ii) whenever all of the following criteria are met:

~~(1-)~~) a. The ambient mass concentration of PM_{2.5} at any location inside Spokane County has reached or exceeded twenty-five (25) micrograms per cubic meter, measured as a running twenty-four (24) hour average using a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, ~~((CFR Title))~~ 40 CFR Part 50 Appendix L, or equivalent; and

~~(2-)~~) b. Meteorological conditions have caused PM_{2.5} ambient mass concentrations to rise rapidly; and

~~(3-)~~) c. The Agency predicts that meteorological conditions will cause PM_{2.5} ambient mass concentrations measured as a twenty-four (24) hour running average to exceed thirty-five (35) micrograms per cubic meter of air within twenty-four (24) hours; and

~~(4-)~~) d. Meteorological conditions are highly likely to prevent smoke from dispersing sufficiently to allow PM_{2.5} ambient mass concentrations to decline below twenty-five (25) micrograms per cubic meter of air within twenty-four (24) hours.

2. Issuance of a second stage burn ban without an existing first stage burn ban shall require the Agency to comply with RCW ~~((70.94.473))~~ 70A.15.3580 (3).

~~(4-)~~) (4) The following matrix graphically illustrates the applicability of SRCAA Regulation I, Article VIII, Sections 8.07 ~~((-A.1-3 of this Regulation))~~ (A) (1) - (3).

Burn Condition	Impaired Air Quality		Air Pollution Episode
	First Stage Burn Ban	Second Stage Burn Ban	
EPA Certified Woodstove	Allowed	Prohibited	Prohibited
Oregon Certified Woodstove	Allowed	Prohibited	Prohibited
Pellet Stove (nonaffected)	Allowed	Prohibited	Prohibited
Washington Certified Device	Allowed	Prohibited	Prohibited
All Other Devices	Prohibited	Prohibited	Prohibited

~~(5-)~~) (5) After July 1, 1995, if the limitation in RCW ~~((70.94.477))~~ 70A.15.3600 (2) is exercised, following the procedure in Section 8.09 (Procedure to Geographically Limit Solid Fuel Burning Devices), and the solid fuel burning device is not one of the following:

~~(a-)~~) (a) A nonaffected pellet stove; or

~~(b-)~~) (b) Washington Certified Device; or

~~(c-)~~) (c) EPA Certified Woodstove; or

~~(d-)~~) (d) Oregon Certified Woodstove.

~~(B-)~~) (B) Consideration. ~~((In consideration of declaring))~~ When determining whether to declare a curtailment under a stage of impaired air quality, the Agency shall consider the anticipated beneficial effect on ambient concentrations of PM_{2.5}, taking into account meteorological factors, the contribution of emission sources other than solid

fuel burning devices, and any other factors deemed to affect the PM_{2.5} mass concentration.

~~((C-))~~ (C) Extinguish Device. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

~~((D-))~~ (D) Enforcement. The Agency, Ecology, Spokane Regional ~~((County))~~ Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device curtailment after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality.

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

SECTION 8.08 EXEMPTIONS

~~((A-))~~ (A) Categories. The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption for his/her residence, issued by the Agency. The Agency may issue written exemptions for residences if any one of the following is demonstrated to the satisfaction of the Agency:

~~((1-))~~ (1) Low Income. An economic need to burn solid fuel for residential space heating purposes by qualifying through Spokane Neighborhood Action Partners (SNAP) for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

~~((2-))~~ (2) No Adequate Source of Heat. An exemption may be issued if all of the following apply:

~~((a-))~~ (a) The residence was constructed prior to July 1, 1992; and

~~((b-))~~ (b) The residence was originally constructed with a solid fuel burning device as a source of heat; and

~~((c-))~~ (c) A person in a residence does not have an adequate source of heat without using a solid fuel burning device (RCW ~~((70.94.477))~~ 70A.15.3600 (6) (a)).

~~((1-))~~ 1. Adequate source of heat means the ability to maintain ~~((seventy degrees Fahrenheit))~~ 70°F at a point three (3) feet above the floor in all normally inhabited areas of a dwelling (WAC 173-433-030(1)); and

~~((2-))~~ 2. If any part of the heating system has been disconnected/removed, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of design for providing an adequate source of heat in Section 8.08 ~~((A.2.c.1-))~~ (A)(2)(c)1., above, on the system's capability prior to the disconnection/removal, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional.

(d) A person's income level is not a determining factor in the approval or denial of an exemption under this provision. Exemptions based on income level are addressed in Section 8.08 ~~((A.1))~~ (A)(1).

~~((3.))~~ (3) Primary Heating Source Temporarily Inoperable. That his/her heating system, other than a solid fuel burning device, is temporarily inoperable for reasons other than his/her own actions. When applying for this exemption, the applicant must submit a compliance schedule for bringing his/her heating system, other than a solid fuel burning device, back into operation to be used as his/her primary heating source. Unless otherwise approved by ~~((SRCAA))~~ the Agency, exemptions will be limited to thirty (30) calendar days. A person's income level is not a determining factor in the approval or denial of an exemption under this provision.

~~((4. State of Emergency If a state of emergency is declared by an authorized local, state, or federal government official due to a storm, flooding, or other disaster, which is in effect during a burn ban declared pursuant to Section 8.07 of this Regulation, the Control Officer may temporarily issue a State of Emergency exemption. The State of Emergency exemption shall serve as a general exemption from burn ban provisions in Section 8.07. The temporary approval shall reference the applicable state of emergency, effective date, expiration date, and limitations, if any (e.g. specific geographic areas affected).))~~

(4) Emergency Power Outage. To prevent loss of life, health, or business, Section 8.07 does not prevent burning wood in a solid fuel burning device for heat during an emergency power outage that leaves a person's residence or commercial establishment temporarily without an adequate source of heat [RCW 70A.15.3580 (5)(a)]. A written exemption is not required. A person must comply with Section 8.07 after a time period of three (3) hours after power is restored by utility provider. A person must comply with Section 8.05 and 8.06 at all times.

~~((B.))~~ (B) Exemption Duration and Renewals. Written exemptions shall be valid for a period determined by the Agency, which shall not exceed one (1) year from the date of issuance. Exemptions in Section 8.08 ~~((A.1 & 2))~~ (A)(1) and (2) may be renewed by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. For renewals under Section 8.08 ~~((A.1))~~ (A)(1), the applicant must demonstrate the low income status is met each time application is made. Exemption requests may be denied by the Agency, regardless of the applicant's exemption history.

~~((C.))~~ (C) Fees. Exemption requests must be accompanied by fees specified in Article X, Section 10.10 and ~~((SRCAA))~~ the ~~((is fee schedule))~~ Consolidated Fee Schedule. For exemptions which are requested and qualify under the low income exemption in Section 8.08 ~~((A.1))~~ (A)(1), the fee is waived.

~~((D.))~~ (D) One-Time, 10-Day Temporary Exemption.

(1) ~~((SRCAA))~~ The Agency may issue one-time, 10-day temporary solid fuel burning device exemptions if persons making such requests qualify and provide all of the information below. Unless required otherwise by ~~((SRCAA))~~ the Agency, such exemptions requests may be taken via telephone.

~~((1.))~~ (a) Full name; and

~~((2.))~~ (b) Mailing address; and

~~((3.))~~ (c) Telephone number; and

~~((4.))~~ (d) Acknowledgement that he/she believes he/she qualifies for an exemption pursuant to Section 8.08 ~~((A.1, 2, or 3))~~ (A)(1), (2), or (3); and

~~((5-))~~ (e) Physical address where the exemption applies; and
~~((6-))~~ (f) Description of the habitable space for which the exemption is being requested; and

~~((7-))~~ (g) Acknowledge that s/he has not previously requested such an exemption for the same physical address, except as provided below, and that all of the information provided is accurate.

(2) One-time, 10-day temporary solid fuel burning device exemptions are not valid for any physical address for which a one-time, 10-day temporary solid fuel burning device exemption has previously been issued unless a past exemption was issued for a residence under different ownership or there is a temporary breakdown that qualifies under Section 8.08 (~~((A.3))~~) (A) (3).

~~((E-))~~ (E) Residential and Commercial Exemption Limitations. Except for commercial establishments qualifying under Section 8.08 (~~((A.3))~~) (A) (3), (A) (4) or 8.08 (~~((D))~~) (D), exemptions are limited to residences. Exemptions are limited to normally inhabited areas of a residence, which includes areas used for living, sleeping, cooking and eating. Exemptions will not be issued for attached and detached garages, shops, and outbuildings. For commercial establishments, exemptions will be limited to areas identified in exemption approvals issued by ~~((SRCAA))~~ the Agency pursuant to Section 8.08 (~~((A.3))~~) (A) (3) or 8.08 (~~((D))~~) (D).

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

SECTION 8.09 PROCEDURE TO GEOGRAPHICALLY LIMIT SOLID FUELBURNING DEVICES

~~((A-))~~ (A) Solid Fuel Burning Devices Contribute to Air Quality Violation. If the EPA finds that the Spokane PM₁₀ Maintenance Area has violated a National Ambient Air Quality Standard for PM₁₀ and emissions from solid fuel burning devices are determined by the EPA, in consultation with Ecology and the Agency, to be a contributing factor to such failure or violation, then one (1) year after such determination, the use of solid fuel burning devices not meeting the standards set forth in RCW (~~((70.94.457))~~) 70A.15.3530 and WAC 173-433-100, is restricted to areas outside the Smoke Control Zone.

~~((B-))~~ (B) Notice of Determination. Within thirty (30) days of the determination pursuant to Section 8.09 (~~((A-))~~) (A), the Agency shall publish a public notice in a newspaper of general circulation, informing the public of such determination and of the date by which such restriction on the use of solid fuel burning devices becomes effective.

~~((C-))~~ (C) Exemptions. Nothing in Section 8.09 shall apply to persons who have obtained an exemption pursuant to Section 8.08.

AMENDATORY SECTION

SECTION 8.10 RESTRICTIONS ON INSTALLATION AND SALES OF SOLID FUEL BURNING DEVICES

~~((A-))~~ (A) Installation of Solid Fuel Burning Devices. No person shall install a new or used solid fuel burning device that is not a Washington certified device in any new or existing building or structure unless the device is a cook stove or a device which has been rendered permanently inoperable.

~~((B-))~~ (B) Sale or Transfer of Solid Fuel Burning Devices. No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used solid fuel burning device that is not a Washington certified device to another person unless the device is a cook stove or a device which has been rendered permanently inoperable (RCW ~~((70.94.457))~~ 70A.15.3530 (1) (a)).

~~((C-))~~ (C) Sale or Transfer of Fireplaces. No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used fireplace to another person, except masonry fireplaces, unless such fireplace meets the 1990 United States environmental protection agency standards for woodstoves or equivalent standard that may be established by the state building code council by rule (RCW ~~((70.94.457))~~ 70A.15.3530 (1) (b)).

~~((D-))~~ (D) Sale or Transfer of Masonry Fireplaces. No person shall build, sell, offer for sale, advertise for sale, or otherwise transfer a new or used masonry fireplace, unless such fireplace meets Washington State building code design standards as established by the state building code council by rule (RCW ~~((70.94.457))~~ 70A.15.3530 (1) (c)).

AMENDATORY SECTION

SECTION 8.11 REGULATORY ACTIONS AND PENALTIES

A person ~~((in violation of))~~ violating this ((a)) Article may be subject to the provisions of Article II, Section 2.11 - Penalties, Civil Penalties, and Additional Means for Enforcement.

AMENDATORY SECTION

SECTION 10.01 DEFINITIONS

(A) Unless a different meaning is clearly required by context, words and phrases used in Regulation I, Article X, shall have the following meaning:

(1) Emission Fee means the component of a registration fee or operating permit fee, which is based on total actual annual emissions of criteria and toxic air pollutants, except as provided in Section 10.06 (B) (2). In the case of a new or modified source or a source being registered initially, the emission fee is based on projected emissions as presented in an approved Notice of Construction (NOC) or registration form.

(2) Registration Period means the calendar year for which an annual fee has been assessed per Section 10.06 (B) (1).

AMENDATORY SECTION

SECTION 10.02 FEES AND CHARGES REQUIRED

(A) ~~((Additional Fee for Failure to Pay))~~ Late Fees. Failure to pay a ((A))ny fee assessed under Article X after ~~((shall be paid with-in))~~ forty-five (45) days of the original payment due date ~~((assessment. Failure to pay an assessed fee in full within ninety (90) days assessment will))~~ may result in ~~((the imposition of))~~ an additional late fee of ~~((equal to))~~ 25% of the original fee.

(B) Penalty. Persons required to pay emission or permit fees who are more than ninety (90) days late with such payments may be subject to a penalty equal to three (3) times the amount of the original fee assessed per RCW 70A.15.3160.

(C) ~~((B-))~~ Revenues Collected per RCW ~~((70.94.161))~~ 70A.15.2260. Revenues collected per RCW ~~((70.94.161))~~ 70A.15.2260 shall be depos-

ited in the operating permit program dedicated account and shall be used exclusively for that ((e)) program.

(D) ~~((C))~~ Method of Calculating Fees in Article X. Invoice totals will be rounded-up to the nearest one (1) dollar, except for public records fees per Section 10.05(A) and Annual AOP Fees per Section 10.06(C).

(E) ~~((D))~~ Periodic Fee Review. The Board shall periodically review all agency fees in the Consolidated Fee Schedule and determine if the total projected fee revenue to be collected is sufficient to fully recover direct and indirect program costs. If the Board determines that the total projected fee revenue significantly exceeds or is insufficient for the program costs, then the Board shall amend the Consolidated Fee Schedule to more accurately recover program costs. Any proposed fee revisions shall include opportunity for public review and comment.

AMENDATORY SECTION

SECTION 10.06 ANNUAL REGISTRATION AND ANNUAL AIR OPERATING PERMIT (AOP) FEES

(A) Annual Fee. Each source required by SRCAA Regulation I, Article IV, Section 4.01 to be registered, each AOP source, and each source required by Article V, Section 5.02 to ~~((obtain an approved and))~~ submit an NOC ((and Application)) application and obtain an ((for)) Order of Approval, is required to pay an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner, operator, or both, shall be responsible for payment of the fee per the requirements in Article X, Section 10.06. Fees received as part of the registration program or the operating permit program shall not exceed the actual costs of program administration.

(B) Annual Registration Fee. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Article X, Section 10.06(C) shall be determined by adding all of the applicable fees below:

(1)	Registration Fee Categories	Fee	Fee Applicability
	Facility Fee ^A	Per the Fee Schedule	Per Source
	Emissions Fee ^B	Per the Fee Schedule	Per Ton
	Emission Point Fee ^C	Per the Fee Schedule	Per Stack/Point
	Synthetic Minor Fee ^D	Per the Fee Schedule	Per Source

^A Each source is subject to the fee listed in the Consolidated Fee Schedule.

^B The additional fee applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.

^C The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.

^D The additional fee applies to each Synthetic Minor.

(2) Calculating Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided by the form due date, the annual reg-

istration fee will be based on the source's maximum potential production rate.

(C) Annual AOP Fee. The annual fee for each AOP source shall be determined as follows:

(1) AOP Annual Fee. For sources that are subject to the AOP program during any portion of the calendar year, the annual fee shall be determined by adding all of the applicable fees described below:

(a) Annual base fee per the Consolidated Fee Schedule.

(b) Emission fee per the Consolidated Fee Schedule.

(c) Agency time fee, as determined per the Consolidated Fee Schedule.

(d) AOP Program Cost Correction, as determined per the Consolidated Fee Schedule.

(e) A share of the assessment by Ecology per RCW ((~~70.94.162~~) 70A.15.2270(3)), as determined per the Consolidated Fee Schedule.

(2) Acid Deposition Fee. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq.), the air operating permit fee shall be determined by adding all of the applicable fees described below:

(a) The AOP Acid Deposition Fee shall be calculated as follows:

1. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request (rounded-up to the nearest half-hour) by the hourly rate as listed in the Consolidated Fee Schedule, for time expended in carrying out the fee eligible activities specified in Chapter ((~~70.94~~) 70A.15 RCW; and

2. Ecology Assessment. A share of the assessment by Ecology per RCW ((~~70.94.162~~) 70A.15.2270(3)), as determined per the Consolidated Fee Schedule.

(b) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total AOP Program Costs}}{\text{Total AOP Program Hours}}$$

(c) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

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

AMENDATORY SECTION

SECTION 10.07 NOTICE OF CONSTRUCTION (NOC) AND PORTABLE SOURCE PERMIT (PSP) APPLICATION FEES

(A) NOC and PSP Fees.

(1) NOC/PSP Class, Base Fee, Fee for Additional NOC/PSP Review Hours, SEPA Fee, and Fee Determination. For each project required by SRCAA Regulation I, Article V, to file a NOC or a PSP application, the owner or operator must pay the following applicable fees in (b) through (d) below:

(a) NOC/PSP Class. Each NOC/PSP application will be assigned a Class, as follows:

1. Class I - PSP to install and operate portable sources include the following:

Article IV Source/Source Category Description
Asphalt plant
Concrete production operation/ready mix plant

Article IV Source/Source Category Description
Rock crusher

2. Class II - Simple NOCs include the following:

Article IV Source/Source Category Description
Coffee roasters with capacities greater than 5kg (11 lbs) per batch
Degreaser/solvent cleaner (not subject to 40 CFR Part 63, Subpart T) subject to Article IV
Dry cleaner (nonhalogenated solvent)
Evaporator subject to Article IV
Gasoline dispensing facility with maximum annual gasoline throughput less than or equal to 1.9 ((1.5)) million gallons
Graphic art system, including lithographic and screen printing operation, subject to Article IV
Material handling equipment (e.g. baghouse, cyclone) ((Material handling operation)) that exhaust((s)) greater than 1,000 and less than 10,000 acfm to the ambient air
Organic vapor collection system within commercial or industrial facility that is subject to Article IV
Rock, asphalt, or concrete crushers
Spray booth/surface coating operations that exhaust((s)) less than or equal to 10,000 acfm to the ambient air
Sterilizer subject to Article IV
Wood furniture stripping operation subject to Article IV

3. Class III - Standard NOCs include the following:

Article IV Source/Source Category Description
Soil and groundwater remediation operation subject to Article IV
Bakery subject to Article IV
Bed lining or undercoating operation subject to Article IV
Boiler and other fuel-burning equipment with maximum per unit heat input less than 100 MMBtu/hr
Brick and clay products manufacturing operations
Burn out, kiln, and curing oven
Chrome plating operation
Concrete production operation
Dry cleaners ((halogenated solvent)) utilizing Perchloroethylene (Perc)
Gasoline dispensing facility with maximum annual gasoline throughput greater than ((1.5)) 1.9 million gallons
Grain handling; seed, pea and lentil processing facility
Incinerator/crematory
Internal combustion engine used for standby, emergency, or back-up operations rated greater than or equal to 500 bhp
Internal combustion engine, not used for standby, emergency, or back-up operations ((other than engines used for standby or backup operation)) rated greater than or equal to 100 bhp
Material handling equipment (e.g. baghouse, cyclone) ((Material handling operation)) that exhaust((s)) greater than or equal to 10,000 acfm to the ambient air
Metal casting facility/foundry
Metal plating or anodizing operation
Metallurgical processing operation
Mill; lumber, plywood, shake, shingle, woodchip, veneer operation, dry kiln, wood products, grain, seed, feed, or flour
Plastic and fiberglass operations using greater than 55 gallons per year of all VOC and toxic air pollutant containing materials
Spray booth/surface coating operations that exhaust((s)) greater than 10,000 acfm to the ambient air
Storage tanks for organic liquid with capacity greater than 20,000 gallons
Stump/wood waste grinder
Tire recapping operation

4. Class IV - Complex NOCs include the following:

Article IV Source/Source Category Description
Asphalt plant
Boiler and other fuel-burning equipment with maximum per unit heat input greater than or equal to 100 MMBtu/hr
Bulk gasoline and aviation gas terminal, plant, or terminal
Cattle feedlot subject to Article IV
Chemical manufacturing operation
Composting operation
Natural gas transmission and distribution facility
Paper manufacturing operation, except Kraft and sulfite paper mills
Petroleum refinery
Pharmaceutical production operation
Refuse systems
Rendering operation
Semiconductor manufacturing operation
Sewerage systems
Wholesale meat/fish/poultry slaughter and packing plant

5. For sources/source categories not listed in Section 10.07 (A) (1) (a), each NOC/PSP application will be assigned to Class I, II, III or IV by the Control Officer on a case-by-case basis.

(b) Base fee. A base fee must be paid to the Agency with the submission of each completed NOC/PSP application. The base fee applicable for each NOC/PSP Class is listed in the Consolidated Fee Schedule.

1. For each NOC/PSP application, the base fee covers staff time spent in reviewing and processing the application up to the listed number of base-fee hours provided in the Fee Schedule for each class of NOC/PSP.

2. For sources with one or more emission points under one NOC application, a separate base fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units will be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

(c) Fee for Additional NOC/PSP Review Hours. When the staff time hours spent reviewing and processing a NOC/PSP application exceeds the listed number of base-fee hours provided in the Consolidated Fee Schedule for the applicable class of NOC/PSP, an additional fee will be charged. The additional fee is calculated by multiplying the total staff time spent in reviewing and processing the NOC/PSP application that exceeds the listed number of review hours (rounded up to the nearest half-hour) by the hourly rate as listed in the Consolidated Fee Schedule.

(d) SEPA Review Fee. Where submittal of an Environmental Checklist, per the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required in association with a NOC or a PSP, and SRCAA is the lead agency, the applicant must pay a SEPA review fee as listed in the Consolidated Fee Schedule. The SEPA review fee must be paid with the submission of the Environmental Checklist to the Agency.

(e) Fee Determinations.

1. The base fee is calculated by multiplying the number of base-fee hours for the NOC/PSP class by the hourly rate listed in the Fee Schedule.

2. Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

3. Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Fees for Replacement or Substantial Alteration of Control Technology and for Changes to an Order of Approval or Permission to Operate.

(a) The following NOC applications or requested changes to an Order of Approval or Permission to Operate must pay a fee as listed in the Fee Schedule. The fee will be assessed each time a request is submitted and will be invoiced to the owner or operator with the final determination.

1. NOC applications for replacement or substantial alteration of control technology under WAC 173-400-114.

2. An owner or operator requesting a modification, revision, and/or change in conditions of an approved Order of Approval or Permission to Operate, under Article V, Section 5.10(C).

(b) The fee is calculated by adding all the applicable fees described below:

1. Minimum Fee. The minimum fee, as listed in the Consolidated Fee Schedule, will be assessed for all NOCs reviewed under WAC 173-400-114 and revision request reviews. The minimum fee includes the first three (3) hours of staff time spent in reviewing and processing the request; and

2. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request beyond the first three (3) hours covered in 10.07 (A)(2)(b)1. (rounded-up to the nearest half-hour), by the hourly rate as listed in the Consolidated Fee Schedule.

(c) Fee Determinations.

1. Flat Fee. The revision flat fee is calculated by multiplying three (3) hours by the hourly rate listed in the Consolidated Fee Schedule.

2. Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

3. Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees.

(1) Upon Submission of Application. The base fee and SEPA fee (if applicable) must be paid at the time the NOC/PSP application is submitted to the Agency. Review of the NOC/PSP application will not commence until the applicable base fee is received.

(2) After Application.

(a) Complete Applications. The Agency will invoice the owner, operator, or both, for Fees for Additional NOC/PSP Review Hours, if applicable. The fees shall be paid whether the application is approved or denied.

(b) Incomplete Applications.

1. If an owner, operator, or both, notifies the Agency in writing that an application will not be completed or cancels the application;

or the application remains incomplete for more than three (3) months; the Agency will invoice the owner, operator, or both, for payment of applicable fees.

2. Applications not accompanied by the base fee will be considered incomplete. If information requested by the Agency is not provided, the application will be considered incomplete and review of the application will be suspended. Review of the application will commence or recommence, when all required fees and information requested by the Agency is received. An application will be cancelled if it remains incomplete for more than eighteen (18) months from initial receipt. For review of the cancelled application to resume, the applicant must pay all outstanding invoice fees, if applicable, and resubmit the applicable base fee.

(C) Compliance Investigation Fee. When a compliance investigation is conducted per Article V, Section 5.12, the compliance investigation fee shall be assessed per the Consolidated Fee Schedule. The fee shall be assessed for each emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of calculations can be used to characterize emissions from each of the emissions units.

AMENDATORY SECTION

SECTION 10.08 MISCELLANEOUS FEES

(A) Miscellaneous Fees.

(1) Emission Reduction Credit Fee.

(a) Review of emission reduction credits per WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, per the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Variance Request Fee.

(a) Processing a variance request per RCW ((70.94.181)) 70A.15.2310 or SRCAA Regulation I, Article III, shall require the applicant to pay a variance request fee per the Consolidated Fee Schedule. The fee will be assessed each time a request is submitted.

((and)) The applicant must pay the initial filing fee upon submittal of the variance application to SRCAA. The balance of the variance fee 10.08 (A) (2) (b) 2. - 4. will be invoiced to the applicant and must be paid by the applicant prior to receiving ((with)) the final determination.

(b) The variance request fee is calculated by adding all of the applicable fees described below:

1. Initial ((F)) filing fee per the Consolidated Fee Schedule, must be paid upon submittal of the variance application.

2. Agency legal fees related to the variance request.

3. Public notice fees.

4. Hourly fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Fee Determination.

1. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total Program Costs}}{\text{Total Program Hours}}$$

2. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(3) Alternate Opacity Fee.

(a) Review of an alternate opacity limit per RCW ((~~70.94.331~~) 70A.15.3000) (2) (c) shall require the applicant to pay an alternate opacity fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is determined by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(4) Other Services Fee.

(a) Applicants of other services including:

1. Requests under the following sections of Regulation I, Article VI, Sections 6.13 (E) (3) (j); 6.13 (F) (3); 6.13 (F) (4); 6.13 (F) (6) and 6.13 (F) (9).

2. Registration exemption requests.

3. Other.

(b) Applicants shall pay a fee per the Consolidated Fee Schedule.

(c) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(d) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(e) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees. The Agency will invoice the owner, operator, or both, for all applicable fees. The fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.08 (A) (1), (2), (3) and (4) are approved or denied; except Section 10.08 (A) (2) as provided in Article III, Section (~~(3.02.B.)~~) 3.02(B).

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

WSR 23-08-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed March 29, 2023, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-084.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is planning to amend WAC 388-106-0010 What definitions apply to this chapter? and 388-106-0130 How does the department determine the number of hours I may receive for in-home care?

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 23, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to amend rules that are a result of DSHS efforts to modernize the comprehensive assessment and reporting evaluation (CARE) assessment tool. Most of the changes in this proposal were intended to be a part of WSR 20-23-124 and went through most of the rule-making review process but had to be pulled in order to prioritize other rule-making priorities. There have been no changes that affect how DSHS determines eligibility or benefit level using the CARE tool. In addition, in WAC 388-106-0010, "Turning and repositioning program," "Passive range of motion," "Active range of motion," and "Bowel program" definitions are being added. A couple of definitions that are no longer relevant are being removed. Subsection (6)(c) is being removed because it is being added to WAC 388-106-0010(3) "Informal support" definition in this rule-making effort. Also, updates to terminology were made due to CARE modernization.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: RCW 74.08.090 and 74.09.520.

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: None.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rachel Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-789-1708.

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 proposed rules are exempt under RCW 34.05.328 (5)(b)(vii), rules of DSHS relating only to client medical or financial eligibility.

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.

March 28, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4948.7

AMENDATORY SECTION (Amending WSR 21-04-037, filed 1/26/21, effective 3/1/21)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

- (1) Understood: You expressed ideas clearly;
- (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;
- (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (((e.g.)) such as food, drink, sleep, toilet);
- (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (((e.g.)) such as indicated presence of pain or need to toilet);
- (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Active range of motion" means exercises performed by the client to maintain their joint function to the joint's optimal range. Exercises may be performed with the assistance of cueing or reminders by caregivers. A formal, active range of motion program needs to be first established by a qualified registered nurse or therapist. Range of motion may be self-directed based upon an occupational or physical therapist assessment and continued without occupational or physical therapist supervision.

"Activities of daily living (ADL)" means the following:

- (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

(2) Bed mobility: How you moved to and from a lying position, turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

(3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

(4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, (~~(e.g.)~~) such as, by mouth, tube, or through a vein. Eating does not include any set up help you received, (~~(e.g.)~~) such as bringing food to you or cutting it up in smaller pieces.

(5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

(6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility, or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

(7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

(8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

(9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy, or catheter bag. This type of set up assistance is considered under the definition of support provided.

(10) Transfer: How you moved between surfaces, (~~(e.g.)~~) such as, to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

(11) Personal hygiene: How you (~~(maintain)~~) maintained personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene tasks completed in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person (~~(sixty-five)~~) 65 years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

Partially met due to availability of other informal support. The department determines the amount of the assistance available using one of four categories:

- (1) Less than one-fourth of the time;
- (2) One-fourth to one-half of the time;
- (3) Over one-half of the time to three-fourths of the time; or
- (4) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

- (1) Application of ointment or lotions;
- (2) Trimming of toenails;
- (3) Dry bandage changes; or
- (4) Passive range of motion treatment.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the ~~((medical assistance administration))~~ health care authority.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (1) Foot care if you are diabetic or have poor circulation; or
- (2) Changing bandages or dressings when sterile procedures are required.

"Bowel program" means a regular, ongoing program, other than oral medications, that must include interventions such as rectal stimulation using the finger, over the counter suppositories, or enemas to facilitate evacuation of your bowels. Regimens only promoting bowel regularity, including oral medications or supplements, nutrition, hydration, or positioning are not considered in this definition.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than ~~((eighteen))~~ 18 years of age.

~~("Health action plan") ((means an individual plan, which identifies health-related problems, interventions and goals.))~~

"Client" means an applicant for service or a person currently receiving services from the department.

"Current behavior" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(1) Whether the behavior is easily altered or not easily altered; and

(2) The frequency of the behavior.

"Decisions" ((making)) means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks ~~((of activities))~~ of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

(1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values ~~((-))~~;

(2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations ~~((-))~~;

(3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues, and supervision in planning, organizing, and correcting daily routines. You attempted to make decisions, although poorly.

(4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions ~~((-))~~;

(5) Child under ~~((twelve))~~ 12: Proficiency in decision making is not expected of a child under ~~((twelve))~~ 12 and a child under ~~((twelve))~~ 12 would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

~~("Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:~~

~~(1) No difficulty in performing the IADL;~~

~~(2) Some difficulty in performing the IADL (e.g., you need some help, are very slow, or fatigue easily); or~~

~~(3) Great difficulty in performing the IADL (e.g., little or no involvement in the IADL is possible).)~~

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self-performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Health action plan" means an individual plan, which identifies health-related problems, interventions, and goals.

"Home health agency" means a licensed:

(1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(a) Private duty nursing; or

(b) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" under RCW 74.39A.240 means a person (~~contracted with the department to provide personal care or respite services~~), including a personal aide, who, under an individual provider contract with the department, or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs, or similar state-funded in-home care programs.

"Informal support" means:

(1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community-based services funding, except as allowed in subsection (3) of this definition. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: Family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department; and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by in-

forming the case manager that the individual provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

(3) Adult day health and adult day care is coded in the assessment as a source of informal support, regardless of funding source;

(4) Informal support does not include age appropriate functioning.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community in ~~((thirty))~~ 30 days prior to the assessment and includes the following:

(1) Meal preparation: How meals were prepared ~~((e.g.))~~ such as, planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(2) Ordinary housework: How ordinary work around the house was performed ~~((e.g.))~~ such as, doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

(3) Essential shopping: How shopping was completed to meet your health and nutritional needs ~~((e.g.))~~ such as, selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities, and household items required specifically for your health, maintenance, or well-being. This includes shopping with or for you.

(4) Wood supply: How wood or pellets were supplied ~~((e.g.))~~ such as, splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating ~~((and/))~~ or cooking.

(5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving a vehicle yourself or traveling as a passenger in a car, bus, or taxi.

~~((6) Managing finances: How bills were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.~~

~~(7) Telephone use: How telephone calls were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).)~~

"Long-term care services" means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" or "medically needy program (MNP)" means the ~~((status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for~~

~~income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.)~~ state and federally funded health care program available to specific groups of people who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income or resources above the CN standard may also qualify for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

- (1) The design, delivery, and evaluation of services and supports;
- (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;
- (3) Determining how to meet their own needs;
- (4) Determining how and by whom these needs should be met; and
- (5) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

- (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;
- (2) In a building that you own;
- (3) In a relative's established residence; or
- (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Passive range of motion" means a maintenance movement exercise of each joint only to the extent the joint can move. Passive range of motion is performed by a caregiver because the client is unable to move the joint without assistance. A formal passive range of motion program needs to be first established by a qualified registered nurse or therapist. Passive range of motion may be self-directed based upon an occupational or physical therapist assessment and continue without occupational or physical therapist supervision.

"Past behavior" means the behavior ((occurred from eight days to five years of the assessment date)) did not occur in the last seven days, but did occur more than seven days from the assessment date. For behaviors indicated as past behaviors, the department ((determines)) documents the month and year the behavior last occurred and whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(1) Having a signed department contract to provide long-term care client services; and

(2) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care, or enhanced adult residential care.

"Self-performance for ADLs" means a code based on what you actually did for yourself and how much help you received with ADLs, with the exception of bathing, in the last seven days before your assessment, not what you might be capable of doing. For codes of supervision, limited assistance, and extensive assistance, self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADL((s)) codes of supervision, limited assistance, and extensive assistance, does not include physical assistance that occurred less than three times in the seven-day look back period, or set-up help for any self-performance ADL code. ((Your self performance level is scored as:))

(1) Based on information provided during your assessment, the CARE tool assigns a self-performance code to each ADL. When you received the same type of help (such as oversight, nonweight bearing, or weight bearing help) with an ADL at least three times, CARE assigns the self-performance code associated with the most dependent type of help you received at least three times. Your self-performance level code is:

((1)) (a) Independent, if you received:

(i) no help, including oversight, encouragement, or cueing, or;

(ii) help including oversight, encouragement, or cueing only once or twice in the seven-day period; ((or oversight, or if you needed help or oversight only once or twice;))

((2)) (b) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

((3)) (c) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs ((en)) three or more ((occasions)) times.

((4)) (d) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing ((support)) help or you ((received full performance of a)) did not participate in a subtask of the ADL, but ((not all,)) did participate in other subtasks of the ADL.

((5)) (e) Total dependence, if you did not participate at all in the completion of the ADL. Every time the ADL was completed during the entire seven-day period, you received ((full caregiver performance every time the ADL and)) complete assistance of all subtasks ((are))

completed during the entire seven-day period (~~(from)~~) by others. (~~Total dependence means complete nonparticipation by you in all aspects of the ADL~~); or

~~((6))~~ (f) (~~ADL~~) Did not occur, if you or others did not perform ~~(an)~~ the ADL over the last seven days before your assessment. This means the activity did not happen. For example, for "walk in room" to have a code of "did not occur" it means in the last seven days before your assessment, you did not walk even one time. The ADL may not have occurred because:

~~((a))~~ (i) You were not able ~~((e.g., walking))~~ such as, you were not able to walk because you are ~~((if))~~ paralyzed);

~~((b))~~ (ii) No provider was available to assist; or

~~((c))~~ (iii) You declined ~~((assistance))~~ help with the task.

(2) When your self-performance code is not independent, extensive assistance, total dependence, or did not occur, and you received help with the ADL at least three times, but not three times of the same type of help, the CARE tool determines a self-performance code by:

(a) Selecting the three times where you received the most help; and

(b) Assigning a self-performance code based on the least dependent type of help of those three times.

(3) CARE assigns a self-performance code of:

(a) Supervision, if oversight, encouragement, or cueing was the least dependent type of help you received of the three times; or

(b) Limited assistance, if nonweight bearing help or guided maneuvering of your limbs was the least dependent type of help you received out of the three times.

(c) For example, if you received oversight help twice, nonweight bearing help twice, and weight bearing help twice, CARE:

(i) Selects two times of weight bearing help and one time of non-weight bearing help because these were the three times where you received the most help; and

(ii) Assigns a self-performance code of limited assistance because nonweight bearing help was the least dependent type of help you received out of the three times where you received the most help.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

(1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

(2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

(4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be per-

formed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven-day look back period, or set-up help. Your self-performance level is scored as:

(1) Independent, if you received no help or oversight to complete the ADL of bathing.

(2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

(3) Physical help transfer only, if in order to bathe you had help to transfer only.

(4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

(5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

(6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

(a) You were not able ((e.g.)) for example, you may be paralyzed);

(b) No provider was available to assist; or

(c) You declined because you chose not to perform the ADL.

"Self-performance for IADLs" means what you actually did in the last ((thirty)) 30 days before the assessment, not what you might be capable of doing or how well you performed the IADL. Scoring is based on the level of performance that occurred at least one time in the ((thirty)) 30-day period. Your self-performance is scored as:

(1) Independent, if you received no help, set-up help, or supervision;

(2) Assistance, if you received any type of help with the ((task)) activity, including setup, cueing, or monitoring, or the activity was fully performed by others in the last ((thirty)) 30 days;

(3) Total assistance, if you are a child and needed the IADL fully performed by others and you are functioning outside of typical developmental milestones; or

(4) IADL did not occur, if you or others did not perform the IADL in the last ((thirty)) 30 days before the assessment.

"Service summary" is CARE information which includes: Contacts ((e.g.)) such as, emergency contacts), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a ((provider)) preferred schedule if identified by the client, identified referrals((/information)), and dates and agreement to the outlined services.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

- (1) That will be provided by informal supports; or
- (2) That will be provided to a child primarily due to his or her age.
- (3) The department determines the status of each ADL or IADL and codes the status as follows:
 - (a) Met, which means the ADL or IADL will be fully provided by an informal support;
 - (b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;
 - (c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;
 - (d) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or
 - (e) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

- (1) No set-up or physical help provided by others;
- (2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);
- (3) One-person physical assist provided;
- (4) Two- or more person physical assist provided; or
- (5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"Turning and repositioning program" is a consistent and organized method in which your caregiver must position and realign your body to prevent or treat skin breakdown. This program is needed because you are physically unable to reposition yourself while sitting or lying down.

"You/your" means the client.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 21-04-037, § 388-106-0010, filed 1/26/21, effective 3/1/21. Statutory Authority: RCW 74.08.090. WSR 18-16-004, § 388-106-0010, filed 7/19/18, effective 8/19/18. Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 15-20-054, § 388-106-0010, filed 9/30/15, effective 10/31/15; WSR 14-13-060, § 388-106-0010, filed 6/12/14, effective 7/13/14; WSR 14-04-097, § 388-106-0010, filed 2/4/14, effective 3/7/14; WSR 11-22-043, § 388-106-0010, filed 10/27/11, effective 11/27/11; WSR 10-08-074, § 388-106-0010, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0010, filed 7/25/06, effective 8/25/06. Statutory Authority:

RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0010, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0010, filed 5/17/05, effective 6/17/05.]

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 21-04-037, filed 1/26/21, effective 3/1/21)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services:

(a) The CARE tool determines the adjustment for informal supports and age appropriate functioning. A numeric value is assigned to the status and ~~(/or)~~ assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) ~~((below))~~ of this section.

Meds	Status	Assistance Available	Numeric Value
Medication <u>management</u> The rules to the right apply for all ((Self Performance)) <u>self-performance</u> codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
>3/4 time		.3	
Unscheduled ADLs	Status	Assistance Available	Value
Bed mobility, transfer, walk in room, eating, toilet use The rules to the right apply for all ((Self Performance)) <u>self-performance</u> codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
>3/4 time		.3	

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing The rules to the right apply for all ((Self Performance)) self-performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
>3/4 time		.15	

IADLs	Status	Assistance Available	Value
Meal preparation, ordinary housework, essential shopping The rules to the right apply for all ((Self Performance)) self-performance codes except independent is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.3
		1/4 to 1/2 time	.2
		1/2 to 3/4 time	.1
>3/4 time		.05	

IADLs	Status	Assistance Available	Value
Travel to medical The rules to the right apply for all ((Self Performance)) self-performance codes except independent which is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
>3/4 time		.3	

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths ((e.g.) for example, .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2) of this section, the department may add on hours based on off-site laundry, living more than ((~~forty-five~~)) 45 minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours	
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met:	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
		>3/4 time		2
Client is >45 minutes from essential services (which means ((he/she)) the client lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met	<1/4 time		5
		between 1/4 to 1/2 time		4
		between 1/2 to 3/4 time		3
		>3/4 time		2
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
		>3/4 time		2

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of adjustments under subsections (2) and (3) of this section is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) If you are eligible, your hours may be used to authorize the following services:

- (a) Personal care services from a home care agency provider ~~((and/or))~~ an individual provider, or both.
- (b) Home delivered meals ~~((i.e.))~~ a half hour from the available hours for each meal authorized) per WAC 388-106-0805.
- ~~((c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.~~
- ~~((d) A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.~~
- ~~((e))~~ (c) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 ~~((i.e.))~~ one hour from the available hours for each hour of PDN authorized).
- ~~((f))~~ (d) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide informal support for the child's ADLs, IADLs, and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables (~~below~~) in this section when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self-performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e) of this section, unless the circumstances in subpart

(d) (~~below~~) of this section apply.
 (d) The department will code status as other than age appropriate for an ADL, despite your self-performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) (~~below~~) of this section, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency (~~and~~) or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Medication management	Independent Self-directed Assistance required	Child under 18 years of age
	Must Be administered	Child under 12 years of age
Locomotion in room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion outside room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age
Toilet use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/ Transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) of this section unless the circumstances in subpart (g) (~~below~~) of this section apply. (For example, a (~~sixteen~~) 16-year-old child coded as supervision in self-performance for (~~telephone~~) wood supply would be coded "child under (~~eighteen~~) 18.")

(g) If the department determines during your assessment that the frequency (~~and~~) or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) of this section for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	Self-Performance	Developmental Age Range
((Finances Telephone)) Wood supply	Independent ((Supervision Limited Extensive)) Assistance ((Total)) <u>Activity did not occur</u>	Child under 18
Transportation	Independent ((Supervision Limited Extensive)) Assistance <u>Activity did not occur</u>	Child under 18
	Total	Child under 16

Developmental Milestones for Instrumental Activities of Daily Living		
IADL	Self-Performance	Developmental Age Range
Essential shopping, housework, meal ((Prep)) preparation	Independent ((Supervision Limited Extensive)) Assistance <u>Activity did not occur</u>	Child under 18
	Total	Child under 12

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory, and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) of this section unless the circumstances in subpart (j) ~~((below))~~ of this section apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory, and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) ~~((below))~~ of this section.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	Question in CARE Panel	Developmental Milestone coding selection	Developmental Age Range
((Speech/Hearing)) Behavioral Health: Cognitive Performance-Comprehension	"By others, client is" / " <u>By client, others are</u> "	Child under 3	Child under 3
((Psych-Social)) Behavioral Health: MMSE	"Can MMSE be administered?"	= No	Child under 18
((Psych-Social)) Behavioral Health: Memory((/ Short Term)))	((Recent memory)) " <u>Is there evidence of short term memory loss?</u> "	Child under 12	Child under 12
((Psych-Social: Memory/ Long Term))	((Long Term memory)) " <u>Is there evidence of long term memory loss?</u> "	Child under 12	Child under 12
((Psych-Social)) Behavioral Health: Depression	"Interview"	Unable to obtain	Child under ((12)) <u>9</u>
((Psych-Social)) Behavioral Health: Cognitive Performance-Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control" is which of the following:		
	Continent Usually Continent Occasionally Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7) of this

section, the department will assess for any informal supports available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) When you are living with your legally responsible parent(s), the department will presume that you have informal supports available to assist you with your ADLs and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step(-)parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided, and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 21-04-037, § 388-106-0130, filed 1/26/21, effective 3/1/21; WSR 15-20-054, § 388-106-0130, filed 9/30/15, effective 10/31/15; WSR 14-04-097, § 388-106-0130, filed 2/4/14, effective 3/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2010 c 37. WSR 11-11-024, § 388-106-0130, filed 5/10/11, effective 6/10/11. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 08-23-011, § 388-106-0130, filed 11/6/08, effective 12/7/08; WSR 08-03-111, § 388-106-0130, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0130, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0130, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0130, filed 5/17/05, effective 6/17/05.]

WSR 23-09-014

WITHDRAWAL OF PROPOSED RULES

NOXIOUS WEED

CONTROL BOARD

(By the Code Reviser's Office)

[Filed April 10, 2023, 11:12 a.m.]

WAC 16-750-003 and 16-750-015, proposed by the noxious weed control board in WSR 22-19-100, appearing in issue 22-19 of the Washington State Register, which was distributed on October 5, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 23-09-026
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed April 12, 2023, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-108.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-106-1900 What definitions apply to medicaid alternative care (MAC) and tailored support for older adults (TSOA) services? and 388-106-1915 What services may I receive in MAC and TSOA? DSHS is not proceeding with amendments to other sections listed on the CR-101 pre-proposal at this time. DSHS determined they did not need to be amended for this proposal. The proposed rules clarify definitions and amend services provided to MAC and TSOA recipients.

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington Street [S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bludg-2> [<https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>]; or virtually. Due to COVID-19 pandemic, hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 23, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, email shelley.tencza@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending chapter 388-106 WAC to update definition language, add additional services that are included in the 1115 Medicaid Transformation Waiver renewal, and clarifying eligibility and updating language.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.39A.030.

Statute Being Implemented: RCW 74.08.090 and 74.39A.030.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Resa Lee-Bell, P.O. Box 45600, Olympia, WA 98504-5600, 564-999-1287.

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) (vii) which states in part, ["t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

April 11, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4972.1

AMENDATORY SECTION (Amending WSR 22-18-004, filed 8/25/22, effective 9/25/22)

WAC 388-106-1900 What definitions apply to MAC and TSOA services? The following definitions apply to MAC and TSOA services:

"Care plan" means the plan developed by the department in GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"Care receiver" means an adult age 55 and over who has been authorized for MAC or TSOA services.

"Caregiver" means a spouse, relative, or friend (age 18 and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"Caregiver assistance services" are services that take the place of those typically performed by an unpaid caregiver in support of the care receiver's unmet needs for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"Caregiver phases" means the phases a caregiver experiences as the needs of the care receiver change, which in turn changes the responsibilities and tasks of caregiving. The change in responsibilities and tasks impacts the relationship between the caregiver and the care receiver. There are five phases showing the change in relationship roles from primarily family member to primarily caregiver. The five phases are:

(1) Phase one - Acting as a relative/friend almost all of the time;

(2) Phase two - Acting most often as a relative/friend, but sometimes as a caretaker;

(3) Phase three - Acting equally as a relative/friend and as a caregiver;

(4) Phase four - Acting most often as a caregiver, but sometimes you are still a relative/friend; and

(5) Phase five - Acting as a caregiver almost all of the time.

"Family caregiver" means the same as "caregiver."

"GetCare" means a statewide web-based information system that includes a client management component that includes screening and assessment tools for use by area agencies on aging (AAA) and other aging and disability network partners.

"GetCare assessment" is a process during which the department gathers information for an individual without a caregiver in the following areas: Functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

"GetCare screening" is a process during which the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: Function needs, fall risk, availability of informal help, memory and decision-making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

"Health maintenance and therapies" are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

"Identity discrepancy" means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

"MAC" means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community-based services.

"Medicaid transformation ((demonstration) project)" refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This ((waiver)) is a five year demonstration waiver to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

"Personal assistance services" are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

"RDAD" means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping caregivers provide assistance to the person.

"Service provider" means an agency or organization contracted with the department.

"Specialized medical equipment and supplies" are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

"TCARE" means tailored caregiver assessment and referral, which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the

unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving. TCARE was developed by a research team at the University of Wisconsin-Milwaukee led by Dr. Rhonda Montgomery in collaboration with over 30 organizations serving family caregivers. The TCARE process is licensed for use by Tailored Care Enterprises, Inc.

"TCARE assessment" is a part of the TCARE process during which the department assessors gather responses to all of the TCARE screening questions and additional questions focused on both the caregiver's experience and the care receiver's situation, such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

"TCARE screening" is a part of the TCARE process during which the department gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

"Training and education" are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

"TSOA" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

- (1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and
- (2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

[Statutory Authority: RCW 74.08.090 and 74.39A.030. WSR 22-18-004, § 388-106-1900, filed 8/25/22, effective 9/25/22. Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1900, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 22-18-004, filed 8/25/22, effective 9/25/22)

WAC 388-106-1915 What services may I receive in MAC and TSOA?

MAC and TSOA services include the following three benefit levels referred to as steps in subsections (1) through (3) of this section. You and your family caregiver may receive services under any of the three steps depending upon your requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, you may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

- (a) Information and referrals to family caregiver or community resources;
- (b) A selection of the following services up to a one time limit of \$250:
 - (i) Training and education, which includes but is not limited to:

- (A) Support groups;
- (B) Group training;
- (C) Caregiver coping and skill building training;
- (D) Consultation on supported decision making;
- (E) Caregiver training to meet the needs of the care receiver;
- (F) Financial or legal consultation; and
- (G) Health and wellness consultation;
- (ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:
 - (A) Supplies;
 - (B) Specialized medical equipment, which includes durable medical equipment; and
 - (C) Assistive technology;
- (iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and
- (iv) Health maintenance and therapy supports, which may include but are not limited to:
 - (A) Adult day health;
 - (B) RDAD and evidence based exercise programs;
 - (C) Health promotion and wellness services; and
 - (D) Counseling related to caregiving role.
- (2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:
 - (a) Information and referrals to family caregiver or community resources;
 - (b) The following services up to an annual limit of \$500 minus any expenditures for step one services:
 - (i) Training and education, which includes but is not limited to:
 - (A) Support groups;
 - (B) Group training;
 - (C) Caregiver coping and skill building training;
 - (D) Consultation on supported decision making;
 - (E) Caregiver training to meet the needs of the care receiver;
 - (F) Financial or legal consultation; and
 - (G) Health and wellness consultation;
 - (ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:
 - (A) Supplies;
 - (B) Specialized medical equipment, which includes durable medical equipment;
 - (C) Assistive technology; and
 - (D) Personal emergency response system (PERS);
 - (iii) Caregiver assistance services, which include but are not limited to:
 - (A) Short-term respite and, if necessary, nurse delegation to allow the caregiver to attend an educational event or training series;
 - (B) Home delivered meals for the care receiver and caregiver;
 - (C) Minor home modifications and repairs to the care receiver's home;
 - (D) Home safety evaluation of the care receiver's home; and
 - (E) Transportation, (~~only in conjunction with the delivery of a service~~) in accordance with the assessment to facilitate access to waiver and other community services, activities, and resources as specified by the individualized care plan; and
 - (F) Bath aide;

(iv) Health maintenance and therapy supports, which include but are not limited to:
 (A) Adult day health;
 (B) RDAD and evidence based exercise programs;
 (C) Health promotion and wellness services such as massage therapy and acupuncture therapy; and
 (D) Counseling related to the caregiving role; and
 (v) Personal assistance services for the TSOA without an unpaid caregiver, as described in WAC 388-106-1910 (e) (ii), which include but are not limited to:

(A) Adult day care;
 (B) Transportation, (~~only in conjunction with the delivery of a service~~) in accordance with the assessment to facilitate access to waiver and other community services, activities, and resources as specified by the individualized care plan;
 (C) Home delivered meals;
 (D) Home safety evaluation of the care receiver's home; and
 (E) Minor home modifications and repairs to the care receiver's home.

(3) Step three:

(a) For MAC and TSOA care receivers with caregivers:

(i) You may receive information and referrals to family caregiver or community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, your caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE measures described in WAC 388-106-1932. TCARE uses an evidence-based algorithm to identify a primary goal based on your caregiver's answers to the TCARE assessment questions. The department will assist you to develop an individualized care plan containing the services chosen by you and your caregiver up to the limits established in WAC 388-106-1920.

(iii) The table below lists the available step three services. The Xs in the table indicate the services that may be recommended by the TCARE strategies, defined in WAC 388-106-1930, from your caregiver's assessment. You may request services in this step that the TCARE assessment does not list as a recommendation.

Services	Strategies				
	A	B	C	D	E
<i>Training and education</i>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<i>Specialized medical equipment and supplies</i>					
Supplies		X			
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			

Services	Strategies				
<i>Caregiver assistance services</i>					
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite, including a bath aide		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			
<u>Pest eradication services</u>		<u>X</u>			
<u>Specialized deep cleaning services</u>		<u>X</u>			
<u>Nurse delegation, in conjunction with respite care</u>		<u>X</u>			
<i>Health maintenance and therapy supports</i>					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services such as acupuncture and massage therapy				X	X
Counseling related to the caregiver role	X		X	X	

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screening must result in a risk score of moderate or high as described in WAC 388-106-1933. The department will assist you to develop an individualized care plan that includes the services you have chosen up to the limits established in WAC 388-106-1920.

(iii) The services available include any step one and step two services noted in subsections (1) and (2) of this section (except for respite) and the following (~~(personal assistance services)~~):

(A) ~~Personal ((care+))~~ assistance services which include:

(a) Personal care;

~~((B))~~ (b) Nurse delegation; and

~~((C))~~ (c) Housework/errands and yard work((-));

(B) Pest eradication services;

(C) Specialized deep cleaning; and

(D) Community choice guide services.

[Statutory Authority: RCW 74.08.090 and 74.39A.030. WSR 22-18-004, § 388-106-1915, filed 8/25/22, effective 9/25/22. Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1915, filed 3/27/18, effective 4/27/18.]

WSR 23-09-029
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 12, 2023, 3:45 p.m.]

The department of children, youth, and families withdraws WSR 23-08-056, filed April 3, 2023.

Please contact Brenda Villareal at 360-902-7956 if you have any questions or need anything further.

Brenda Villarreal
Rules Coordinator

WSR 23-09-039
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 14, 2023, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-040.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-478-0015 Need standards for cash assistance.

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-of-fice-bldg-2> [<https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2>]; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 23, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will update standards of need for cash assistance programs as required annually by RCW 74.04.770. The amendments utilize the University of Washington Center for Women's Welfare Self-Sufficiency Standard.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090.

Statute Being Implemented: RCW 74.04.770.

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: None.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504, 360-764-0068.

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 amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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.

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

March 23, 2023
 Katherine I. Vasquez
 Rules Coordinator

SHS-4976.1

AMENDATORY SECTION (Amending WSR 22-12-023, filed 5/23/22, effective 7/1/22)

WAC 388-478-0015 Need standards for cash assistance. The monthly need and payment standards for cash assistance are based on a determination of the assistance unit size. The need standards for cash assistance units are:

Assistance unit size	Need standard
1	\$((2,998)) <u>3,258</u>
2	((4,883)) <u>5,290</u>
3	((5,893)) <u>6,396</u>
4	((7,786)) <u>8,359</u>
5	((9,144)) <u>9,872</u>
6	((10,706)) <u>11,463</u>
7	((12,137)) <u>13,081</u>
8	((13,553)) <u>14,542</u>
9	((15,220)) <u>16,428</u>
10 or more	((17,793)) <u>19,017</u>

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 22-12-023, § 388-478-0015, filed 5/23/22, effective 7/1/22; WSR 21-23-102, § 388-478-0015, filed 11/17/21, effective 1/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0015, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 19-24-032, § 388-478-0015, filed 11/25/19, effective 1/1/20; WSR 18-22-021, § 388-478-0015, filed 10/26/18, effective 1/1/19; WSR 18-01-040, § 388-478-0015, filed 12/12/17, effective 1/12/18; WSR 16-23-146, § 388-478-0015, filed 11/22/16, effective 1/1/17; WSR 16-03-013, § 388-478-0015, filed

1/8/16, effective 2/8/16; WSR 14-24-072, § 388-478-0015, filed
11/26/14, effective 1/1/15; WSR 13-24-041, § 388-478-0015, filed
11/26/13, effective 1/1/14; WSR 12-24-034, § 388-478-0015, filed
11/29/12, effective 1/1/13; WSR 11-24-021, § 388-478-0015, filed
11/30/11, effective 1/1/12; WSR 11-01-121, § 388-478-0015, filed
12/20/10, effective 1/1/11; WSR 10-04-111, § 388-478-0015, filed
2/3/10, effective 3/6/10; WSR 08-24-070, § 388-478-0015, filed
12/1/08, effective 1/1/09; WSR 07-24-033, § 388-478-0015, filed
11/30/07, effective 12/31/07; WSR 07-06-066, § 388-478-0015, filed
3/5/07, effective 4/5/07. Statutory Authority: RCW 74.04.050,
74.04.055, 74.04.057, 74.08.090. WSR 06-05-102, § 388-478-0015, filed
2/14/06, effective 3/17/06. Statutory Authority: RCW 74.04.050,
74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 05-22-077 and
05-23-012, § 388-478-0015, filed 10/31/05 and 11/4/05, effective
1/1/06; WSR 05-01-074, § 388-478-0015, filed 12/9/04, effective
1/9/05. Statutory Authority: RCW 74.04.770, 74.04.050, 74.04.055,
74.04.057. WSR 03-24-059, § 388-478-0015, filed 12/1/03, effective
1/1/04; WSR 03-23-116, § 388-478-0015, filed 11/18/03, effective
12/19/03. Statutory Authority: RCW 74.08.090, 74.04.510, and
74.04.770. WSR 02-23-029, § 388-478-0015, filed 11/12/02, effective
12/1/02. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057,
74.08.090, and 74.04.200. WSR 01-11-108, § 388-478-0015, filed
5/21/01, effective 7/1/01. Statutory Authority: RCW 74.04.200. WSR
99-04-056, § 388-478-0015, filed 1/29/99, effective 3/1/99. Statutory
Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR
98-16-044, § 388-478-0015, filed 7/31/98, effective 9/1/98.]

WSR 23-09-040
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 14, 2023, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-054.

Title of Rule and Other Identifying Information: WAC 388-829-0087

What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed?

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street [S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bludg-2> [<https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>]; or virtually. Due to COVID-19 pandemic, hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 23, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending WAC 388-829-0087 to extend due dates for continuing education credits required under chapter 388-829 WAC.

Reasons Supporting Proposal: Direct service providers hired during the COVID-19 public health emergency (PHE) were required to complete 12 hours of continuing education annually. As a result of the PHE, the number of training programs available to provide department-approved continuing education significantly diminished. Changing rules, standards, and a sudden shift to electronic training resulted in both a delay in available training and an increased demand. Providers have reported that there are still a significant number of workers who need to complete continuing education hours that were due while PHE-related training waivers were in place. This is affecting their ability to meet requirements for current renewal cycles because hours must be applied to the older renewal cycles first. Without an extension, direct service providers could end up out of compliance, which could limit client access to qualified providers.

Statutory Authority for Adoption: RCW 74.39A.341.

Statute Being Implemented: RCW 74.39A.341.

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: None.

Name of Proponent: This extension was requested by providers required to comply with chapter 388-829 WAC, private.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementa-

tion and Enforcement: Sarah Blanchette, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1540.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.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(5).

Explanation of exemptions: DDA prepared an analysis under RCW 34.05.328, which revealed that there are no new costs imposed. While providers do pay for their staff to attend trainings, continuing education training reimbursement is built into provider rates.

Scope of exemption for rule proposal:

Is fully exempt.

April 12, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4973.2

AMENDATORY SECTION (Amending WSR 22-14-062, filed 6/29/22, effective 7/30/22)

WAC 388-829-0087 What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed? (1) The department finds that direct support professionals employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Direct support professionals received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all service providers under WAC 388-829-0005. Instruction included infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, direct support professionals required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training comprised of at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training:

(a) Is not considered to be repeated training as described in WAC 388-829-0100; and

(b) Satisfies the 12 hours of annual continuing education training.

(4) The direct support professional may apply the 12 hours of on-the-job training towards continuing education for either 2020 or 2021. The hours must be applied no later than December 31, 2021.

(5) All direct support professionals employed during the dates in subsection (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required.

(6) The department recognizes that direct support professionals may not have completed training hours in excess of the 12 hours of CE granted in subsection (4) of this section due to the COVID-19 public health emergency.

~~(a) All direct support professionals have until ((December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later,))~~ August 31, 2023, to complete any additional CE that may have become due ~~((while training waivers were in place))~~ between January 1, 2020, and February 28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.

~~(b) For an employee required to complete training by their birthday under WAC ((388-101D-0085)) 388-829-0085 (1)(b), the employee ((will have 120 days from the end of the training waivers))~~ has until August 31, 2023, to complete ~~((the required CE if the employee's birthday is fewer than 120 days after the training waivers are lifted))~~ any additional CE that may have become due between January 1, 2020, and February 28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.

[Statutory Authority: RCW 74.39A.074 and 71A.12.030. WSR 22-14-062, § 388-829-0087, filed 6/29/22, effective 7/30/22.]

WSR 23-09-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 14, 2023, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-032.

Title of Rule and Other Identifying Information: Chapter 388-829Z
WAC, Emergency transitional support services.

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by May 23, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is proposing new rules to regulate the emergency transitional support services provided at Rainier, a Washington state residential habilitation center.

Reasons Supporting Proposal: Emergency transitional support services were created in direct response to the COVID-19 public health emergency. With the declared state of emergency over, these rules are intended to inform clients about the service they are receiving and the future of that service.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapter 71A.20 RCW.

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: None.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Brian Woods, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-0626.

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 Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.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.

April 12, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4953.7

Chapter 388-829Z WAC
EMERGENCY TRANSITIONAL SUPPORT SERVICES

NEW SECTION

WAC 388-829Z-005 What definitions apply to this chapter? The following definitions apply to this chapter.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who DDA has determined eligible to receive services under chapter 71A.16 RCW. For purposes of notification, informed consent, and decision-making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services, its employees, and authorized agents.

"Direct support professional" means a person who interacts directly with a client while the client receives emergency transitional support services.

"DSHS" or "the department" means the state of Washington department of social and health services, its employees, and authorized agents.

"Legal representative" means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney-at-law, attorney-in-fact, or any other person who is authorized by law to act for another person.

"Provider" means the state-operated entity on the Rainier School campus providing emergency transitional support services.

"State of emergency" means an emergency proclaimed as such by the governor pursuant to RCW 43.06.010.

[]

NEW SECTION

WAC 388-829Z-010 What is the purpose of this chapter? This chapter establishes rules for emergency transitional support services. These state-funded services, administered by DDA at Rainier School, were created in direct response to a state of emergency declared by the governor.

[]

ELIGIBILITYNEW SECTION

WAC 388-829Z-015 Who may receive emergency transitional support services? (1) To receive emergency transitional support services, a person must:

(a) Have been admitted to Rainier School to receive emergency transitional support services on or before March 31, 2023; or

(b) Meet the following criteria:

(i) The person is eligible for DDA services under chapter 388-823 WAC;

(ii) The person is age 18 or older; and

(iii) The person is:

(A) At risk of being hospitalized without medical need; or

(B) Hospitalized without medical need and there are no safe discharge options immediately available to the person.

(2) Emergency transitional support services are limited to specific legislative appropriations and program capacity.

[]

PROVIDER QUALIFICATIONSNEW SECTION

WAC 388-829Z-020 What are the minimum requirements for direct support professionals providing emergency transitional support services? To provide emergency transitional support services, a direct support professional must:

(1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;

(2) Be age 18 older;

(3) Have a current background check as required by WAC 388-829Z-025; and

(4) Successfully complete residential habilitation center new employee training, which includes at a minimum:

(a) Client rights;

- (b) Mandatory reporting;
- (c) Blood-borne pathogens;
- (d) First aid and CPR;
- (e) Crisis prevention and deescalation;
- (f) Skills training for activities of daily living; and
- (g) Person-centered thinking.

[]

NEW SECTION

WAC 388-829Z-025 Who must have a background check? (1) A direct support professional, volunteer, and any other employee who may have unsupervised access to a DDA client must have a background check.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result as required by DSHS.

[]

NEW SECTION

WAC 388-829Z-030 What will disqualify a direct support professional or a volunteer from working in a capacity that may involve access to DDA clients? (1) Criminal convictions and pending charges that disqualify a direct support professional or a volunteer from working with DDA clients are listed in chapter 388-113 WAC.

(2) A volunteer or person employed by an emergency transitional support services provider who receives a DSHS background check with a disqualifying result is prohibited from any unsupervised access to DDA clients.

[]

SERVICE DELIVERY

NEW SECTION

WAC 388-829Z-035 What services and activities must be a part of emergency transitional support services? The provider must provide the following services and activities at no cost to the client:

- (1) A furnished home environment, including a private bedroom;
- (2) Access to a safe outdoor area for recreation and leisure;
- (3) Support accessing social and recreational opportunities in the community;

- (4) Access to physical and behavioral health services prescribed by the client's treating professional;
- (5) Three nutritious meals and two snacks per day;
- (6) Bedding and towels;
- (7) Access to laundry facilities; and
- (8) Access to a telephone and a place to make private calls.

[]

NEW SECTION

WAC 388-829Z-040 What policies and procedures must the provider have? (1) The provider must implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
- (b) Reporting requirements for suspected abuse, neglect, financial exploitation, and abandonment;
- (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
- (d) Emergent situations that may pose a danger or risk to the client or others;
- (e) Response to a missing person and other client emergencies;
- (f) Emergency response plans for natural and other disasters;
- (g) Client access to medical, mental health, and law enforcement resources;
- (h) Notifications to client's primary caregiver, legal representative, or relatives in case of emergency;
- (i) Client grievances, including timelines, possible remedies, and information about how to submit unresolved grievances to the department; and
- (j) Aspects of medication management, including:
- (i) Supervision of medication; and
- (ii) Client refusal.
- (2) The provider must train employees on its policies and procedures, maintain current written policies and procedures, and make them available upon request to all employees, clients, client legal representatives, and DDA.

[]

NEW SECTION

WAC 388-829Z-045 What requirements must be met before a provider transports a client? Before transporting a client, a provider or direct support professional must have:

- (1) Automobile insurance coverage under chapter 46.30 RCW; and
- (2) A valid driver's license under chapter 46.20 RCW.

[]

NEW SECTION

WAC 388-829Z-050 How must the provider regulate the water temperature at Rainier School? (1) The provider must regulate the water temperature at Rainier School as follows:

- (a) Maintain the water temperature in the household between 105 degrees and 120 degrees Fahrenheit; and
 - (b) Check the water temperature at least once every six months.
- (2) The provider must document compliance with these requirements.

[]

NEW SECTION

WAC 388-829Z-055 What records must the provider keep? (1) For each client, the provider must keep the following information:

- (a) The client's name and address;
 - (b) The name, address, and telephone number of the client's primary guardian or legal representative;
 - (c) A copy of the client's most recent person-centered service plan;
 - (d) Nurse delegation records, if applicable;
 - (e) Progress notes;
 - (f) Incident reports, if applicable;
 - (g) Medication documentation, including a medication intake form and medication administration records, if applicable;
 - (h) A list of the client's personal property upon arrival, acquisition of new property - other than consumables, and property at departure; and
 - (i) A record of money or gift cards managed by the provider on behalf of the client, if applicable.
- (2) An emergency transitional support services provider must also keep the following:
- (a) Water temperature monitoring records;
 - (b) Direct support professional training records; and
 - (c) Direct support professional time sheets specific to locations worked.

[]

NEW SECTION

WAC 388-829Z-060 How must a provider report suspected abuse and neglect? A provider must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

- (1) Adult protective services using the DSHS online reporting tool or by calling 1-877-734-6277 (TTY: 1-800-977-5456); and
- (2) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

[]

TERMINATIONNEW SECTION

WAC 388-829Z-065 When may DDA terminate a client's emergency transitional support services? (1) DDA must terminate a client's emergency transitional support services if requested by the client.

(2) DDA may terminate a client's emergency transitional support services if:

(a) DDA determines and documents that the client cannot be supported safely in the program's environment or poses a danger to other clients in the program; or

(b) The service is not funded by the legislature.

(3) DDA must provide 30 days' advance notice for termination of emergency transitional support services.

[]

NEW SECTION

WAC 388-829Z-070 What are a client's notice and appeal rights?

(1) A client has a right to appeal a termination under WAC 388-829Z-065 (2) (b).

(2) A client does not have a right to appeal termination of emergency transitional support services if the basis for termination is a lack of funding.

[]

CERTIFICATIONNEW SECTION

WAC 388-829Z-075 Must the provider of emergency transitional support services be certified? (1) The provider of emergency transitional support services must be certified by DDA no more than 90 days after the first date of service delivery.

(2) DDA certifies the provider through a certification evaluation to monitor compliance with this chapter and other relevant DDA policies.

(3) DSHS-contracted evaluators conduct the certification evaluations.

(4) The provider must participate in a certification evaluation at least once every 12 months.

[]

NEW SECTION

WAC 388-829Z-080 What if the emergency transitional support services provider disagrees with a certification evaluation or certification decision? If an emergency transitional support services provider disagrees with a certification evaluation or certification decision under this chapter, the provider may request an informal dispute resolution meeting with DDA by:

(1) Submitting a written request to DDA no more than 10 days after receiving the final certification letter and report; and

(2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

[]

NEW SECTION

WAC 388-829Z-085 What happens if the provider is found to be out of compliance? (1) If DDA finds in its evaluation that the emergency transitional support services provider is out of compliance with any part of this chapter, the provider and DDA must develop a plan of correction.

(2) The plan of correction must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

[]

NEW SECTION

WAC 388-829Z-090 When may DDA stop admission authorization for emergency transitional support services? DDA may stop admission authorization for emergency transitional support services if:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter; or

(4) DDA has substantial evidence that a client's health, safety, or well-being is at risk.

[]

WSR 23-09-053
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed April 18, 2023, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-111.

Title of Rule and Other Identifying Information: Independent medical examination (IME). WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in a specialty needed available in a reasonably convenient location for the worker? and 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)?

Hearing Location(s): On May 24, 2023, at 10:00 a.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/85477472867?pwd=YUtgMzBTSHUyNDdmVEJuaXhLL3R4Zz09>, Meeting ID 854 7747 2867, Passcode 52423Mtg#; or join by phone (audio only) 1-253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kemOYtoXOf>. The hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: August 1, 2023.

Submit Written Comments to: Kristen Baldwin-Boe, Department of Labor and Industries (L&I), Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, email Kristen.Baldwin-Boe@lni.wa.gov, fax 360-902-4249, by 5:00 p.m., May 24, 2023.

Assistance for Persons with Disabilities: Contact Kristen Baldwin-Boe, phone 360-902-6815, fax 360-902-4249, email Kristen.Baldwin-Boe@lni.wa.gov, by May 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal addresses in rule how to accommodate the worker when there is no reasonably convenient examiner in the needed specialty near the worker's community, and defines when it may be appropriate for IMEs to be conducted via telemedicine.

Reasons Supporting Proposal: ESSB 6440, passed during the 2020 session, resulted in updates to RCW 51.32.110, 51.36.070, new chapter 51.08 RCW, and new RCW 51.36.072. Specifically, ESSB 6440 amended RCW 51.36.070 to state that an IME "must be at a place reasonably convenient to the injured worker, or alternatively utilize telemedicine if the department determines telemedicine is appropriate for the examination." Under the statute, "reasonably convenient" means at a place where residents in the injured worker's community would normally travel to seek medical care for the same specialty as the examiner. L&I is also required to adopt rules, policies, and processes governing the use and appropriateness of telemedicine for IMEs.

The rules are needed to ensure consistency when L&I or a self-insured employer schedules an in-person or telemedicine IME.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.055, 51.32.110, 51.32.112, 51.32.114, 51.36.070, and 51.36.072.

Statute Being Implemented: RCW 51.36.070.

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: Kristen Baldwin-Boe, Tumwater, Washington, 360-902-6815; Implementation and Enforcement: Karen Jost, Tumwater, Washington, 360-790-2682.

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 Kristen Baldwin-Boe, L&I, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, phone 360-902-6815, fax 360-902-4249, email Kristen.Baldwin-Boe@Lni.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

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. L&I estimates that the proposed change will impose no new costs on the affected parties because the rule provides for alternative pathways to having an in-person IME performed when a worker cannot access a provider in a reasonably convenient location to the worker or in the worker's community.

April 18, 2023
Joel Sacks
Director

OTS-4399.2

NEW SECTION

WAC 296-23-358 What happens when there is no approved independent medical exam (IME) provider in the specialty needed available in a reasonably convenient location for the worker? When there is no approved examiner in the worker's community or in a reasonably convenient location for the worker, the department or self-insurer may make alternate arrangements for the examination including, but not limited to:

- (1) Considering whether a consultation might be a sufficient alternative;
- (2) Using telemedicine where appropriate;
- (3) Notifying the worker or their representative before scheduling the IME in the nearest location available. In this case:
 - (a) Travel must not exceed any travel restrictions imposed by the attending provider unless alternative methods of travel will overcome the travel limitations.
 - (b) The department or self-insured employer will assist the worker with travel accommodations when requested by the worker.
 - (c) Travel accommodations are paid by the department or self-insured employer as listed in the fee schedule.

[]

NEW SECTION

WAC 296-23-359 When is telemedicine appropriate for an independent medical exam (IME)? (1) The following exams may be conducted via telehealth:

- (a) Mental health;
- (b) Dermatology;
- (c) Speech when there is no documented hearing loss;
- (d) Kidney function;
- (e) Hematopoietic system;
- (f) Endocrine.

(2) The terms telehealth and telemedicine are used interchangeably and have the same requirements as in-person visits. Telemedicine may be appropriate to effectively conduct an independent medical exam when:

(a) Face-to-face services by a qualified medical provider can be delivered through a real-time, two-way, audio video connection, and complies with all federal, state, and local rules and laws; and

(b) A worker is able and willing to participate in an exam via telemedicine; and

(c) The department or self-insured employer, and worker, have agreed a telemedicine IME is appropriate; these individuals should also agree to the location of the worker during the exam; and

(d) The agreement is documented in the claim file; and

(e) A physical or hands-on exam is not required.

(3) Upon request of the department or self-insured employer and with the agreement of the worker, a telemedicine IME may be approved on a case-by-case basis for additional specialties not listed under subsection (1) of this section.

[]

WSR 23-09-059

WITHDRAWAL OF PROPOSED RULES

BELLEVUE COLLEGE

[Filed April 18, 2023, 9:36 a.m.]

Due to new and substantive changes to WSR 23-07-107, Bellevue College's library media center WAC, since filing on March 20, 2023, we respectfully request that the CR-102 be rescinded. We anticipate submission of a new CR-102 in the next day or two.

If additional information is required, contact Lori McRea Keller, associate director of policies and special projects, loreen.keller@bellevuecollege.edu or 425-564-6155.

Loreen M. Keller
Rules Coordinator

WSR 23-09-060

PROPOSED RULES

HORSE RACING COMMISSION

[Filed April 18, 2023, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-002.

Title of Rule and Other Identifying Information: WAC 260-49-070

Distribution of source market fee.

Hearing Location(s): On May 23, 2023, at 9:30 a.m., via Zoom teleconference. Link will be available at www.whrc.wa.gov prior to hearing.

Date of Intended Adoption: May 23, 2023.

Submit Written Comments to: Amanda Benton, 6326 Martin Way, Suite 209, Olympia, WA 98516, email Amanda.benton@whrc.wa.gov, fax 360-459-6461, by May 10, 2023.

Assistance for Persons with Disabilities: Contact Melanie Bowdish, phone 360-459-6462, fax 360-459-6461, email melanie.bowdish@whrc.wa.gov, by May 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington horse racing commission (WHRC) may need to adjust the source market fee distribution to reflect a change in duties performed by commission employees if a voluntary agreement with the Horseracing Industry [Integrity and] Safety Authority (HISA) and/or the Horseracing Industry [Integrity and] Welfare Unit (HIWU) is not signed.

Reasons Supporting Proposal: If WHRC does not sign a voluntary agreement with HISA/HIWU, some duties previously carried out by employees of the commission will be performed by employees of HISA/HIWU and the commission cannot collect fees for duties no longer performed by WHRC.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Amanda Benton, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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 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. Not business related.

April 18, 2023
Amanda Benton
Executive Secretary

OTS-4430.2

AMENDATORY SECTION (Amending WSR 22-24-110, filed 12/7/22, effective 1/7/23)

WAC 260-49-070 Distribution of source market fee. (1) A source market fee shall be paid monthly, unless otherwise directed by the commission, for the source market fee area on all accounts that have Washington as the principal residence address.

(2) The authorized advance deposit wagering service provider shall, at least monthly, unless otherwise directed by the commission, distribute the total source market fee as follows:

(a) One hundred percent of the total source market fee directly to the class 1 racing association.

(b) The class 1 racing association shall submit monthly ((~~12.5~~) 2.5 percent of the total source market fee to the commission of which ((~~two and one-half~~) 2.5 percent to be deposited into the Washington bred owners' bonus fund and ((~~10~~) zero percent to be deposited into the commission's operating account.

(c) The class 1 racing association shall distribute two and one-half percent of the total source market fee to the Washington bred breeder award account as provided in RCW 67.16.175.

(d) The class 1 racing association and the recognized horsemen's organization shall negotiate a separate agreement for contributions to the purse account from the source market fee and submit the agreement for review and approval by the commission. The class 1 racing association shall distribute the horsemen's share of the source market fee in accordance with the horseman's agreement.

(3) The commission shall annually review the distribution of the source market fee. Any changes to the distribution shall be adopted by rule.

[Statutory Authority: RCW 67.16.020. WSR 22-24-110, § 260-49-070, filed 12/7/22, effective 1/7/23; WSR 22-02-047, § 260-49-070, filed 1/3/22, effective 2/3/22; WSR 20-19-062, § 260-49-070, filed 9/11/20, effective 10/12/20; WSR 11-17-056, § 260-49-070, filed 8/15/11, effective 9/15/11. Statutory Authority: RCW 67.16.020 and 67.16.040. WSR 09-21-015, § 260-49-070, filed 10/9/09, effective 11/9/09; WSR 05-19-015, § 260-49-070, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 67.16.020. WSR 04-21-053, § 260-49-070, filed 10/18/04, effective 11/18/04.]

WSR 23-09-061

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed April 18, 2023, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-072.

Title of Rule and Other Identifying Information: Medical assistant (MA) rules in WAC 246-827-0010, 246-827-0110, 246-827-0120, 246-827-0140, 246-827-0200, 246-827-0300, 246-827-0400, and 246-827-0610. Proposing rule amendments to update credentialing requirements, ensure that the rules are current and align with best practices, and adding a new section to address telemedicine supervision requirements.

Hearing Location(s): On May 24, 2023, at 10:00 a.m. The department of health (DOH) will be holding a virtual-only hearing. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_MjjJeLMPTkGbbKSzmHAtUQ. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 31, 2023.

Submit Written Comments to: Becky McElhiney, DOH, P.O. Box 47852, Olympia, WA 98504-7852, email medical.assistants@doh.wa.gov, fax 360-236-2850, <https://fortress.wa.gov/doh/policyreview>, by May 24, 2023.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2850, TTY 711, email medical.assistants@doh.wa.gov, by May 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed revisions to MA rules remove outdated language, remove English language requirements, and update credentialing requirements. Outdated language includes removing language concerning the obsolete health care assistant credential. Removing English requirements will remove unnecessary barriers for otherwise well-qualified MA staff to enter the workforce. RCW 18.360.010 was updated by HB 1378 (chapter 44, Laws of 2021) to allow MA supervision using audio and video technology during a telemedicine visit. DOH is adding a new section to detail regulation for telemedicine supervision in response to HB 1378. Amendments are proposed to remove irrelevant or confusing rule language, which will make the rules more easily understood. Updating credentialing requirements to remove licensure barriers will allow experienced MAs to enter the Washington workforce.

Reasons Supporting Proposal: The proposed rules update and clarify the requirements for MA licensees. The proposal also offers more pathways to licensure for applicants to the MA credential, facilitating access to care by qualified MAs. The proposed changes also remove references to the obsolete osteopathic physicians' assistant and osteopathic physicians' acupuncture assistant credentials as qualified supervising health care practitioners. These proposed changes also implement changes made to RCW 18.360.010 by HB 1378 (chapter 44, Laws of 2021) allowing MA supervision using audio and video technology in a telemedicine visit.

Statutory Authority for Adoption: RCW 18.360.030, 18.360.040, and 18.360.070.

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: None.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-2831.

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 360-236-2850, TTY 711, email medical.assistants@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(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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.

April 18, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-4140.3

AMENDATORY SECTION (Amending WSR 17-15-075, filed 7/14/17, effective 8/14/17)

WAC 246-827-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise:

(1) **"Direct visual supervision"** means the supervising health care practitioner is physically present and within visual range of the medical assistant.

(2) **"Forensic blood draw"** means a blood sample drawn at the direction of a law enforcement officer for the purpose of determining its alcoholic or drug content by a person holding one of the credentials listed in RCW 46.61.506, including a medical assistant-certified, medical assistant-phlebotomist, or forensic phlebotomist.

(3) **"Health care practitioner"** means a physician licensed under chapter 18.71 RCW; an osteopathic physician and surgeon licensed under chapter 18.57 RCW; or acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, (~~(an osteopathic physician assistant licensed under chapter 18.57A RCW,~~) or an optometrist licensed under chapter 18.53 RCW.

(4) **"Hemodialysis"** is a procedure for removing metabolic waste products or toxic substances from the human body by dialysis.

(5) **"Immediate supervision"** means the supervising health care practitioner is on the premises and available for immediate response as needed.

(6) **"Legend drug"** means any drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(7) **"Medical assistant"** without further qualification means a person credentialed under chapter 18.360 RCW as a:

- (a) Medical assistant-certified;
- (b) Medical assistant-registered;
- (c) Medical assistant-hemodialysis technician; and
- (d) Medical assistant-phlebotomist.

(8) **"Medical assistant-hemodialysis technician"** means a patient care dialysis technician trained in compliance with federal requirements for end stage renal dialysis facilities.

(9) **"Secretary"** means the secretary of the department of health or the secretary's designee.

(10) **"Telemedicine supervision"** means the delivery of direct patient care under supervision by a health care practitioner provided through the use of interactive audio and video technology, permitting real-time communication between a medical assistant at the originating site and a health care practitioner off premises. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

[Statutory Authority: RCW 18.360.030, 18.360.040, and 18.360.070. WSR 17-15-075, § 246-827-0010, filed 7/14/17, effective 8/14/17. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0010, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0110 Delegation and supervision. (1) The medical assistant functions in a dependent role when providing direct patient care under the delegation and supervision of a health care practitioner.

(2) "Delegation" means direct authorization granted by a health care practitioner to a medical assistant to perform the functions authorized in RCW 18.360.050 which fall within the scope of practice of the health care practitioner and the training and experience of the medical assistant.

(3) A medical assistant may only accept delegated tasks when:

- (a) The health care practitioner follows the requirements of RCW 18.360.060;
- (b) The task can be performed without requiring the exercise of judgment based on clinical knowledge;
- (c) The results of the task are reasonably predictable;
- (d) The task can be performed without a need for complex observations or critical decisions;
- (e) The task can be performed without repeated clinical assessments; and
- (f) The task, if performed improperly by:

(i) A medical assistant-certified, medical assistant-registered, or a medical assistant-phlebotomist would not present life-threatening consequences or the danger of immediate and serious harm to the patient.

(ii) A medical assistant-hemodialysis technician is not likely to present life-threatening consequences or the danger of immediate and serious harm to the patient.

(4) A medical assistant may not accept delegation of acts that are not within ~~((his or her))~~ their scope of practice.

(5) A medical assistant is responsible and accountable for ~~((his or her))~~ their practice based upon and limited to:

(a) Scope of ~~((his or her))~~ their education or training;

(b) Scope of practice set forth in law and applicable sections of this chapter;

(c) Demonstration of competency to the delegating health care practitioner;

(d) Written documentation of competency as required by this rule and the health care employer's policies and procedures. The documentation will be maintained by the health care employer.

~~((6) A medical assistant who has transitioned from a health care assistant credential as of July 1, 2013, may not accept delegated tasks unless he or she has received the necessary education or training to safely and competently perform the task.))~~

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0110, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0120 General standards. (1) ~~((The medical assistant shall have the ability to read, write, and converse in the English language.~~

~~(2))~~ The medical assistant shall have knowledge and understanding of the laws and rules regulating medical assistants, including chapter 18.130 RCW, Uniform Disciplinary Act.

~~((3))~~ (2) The medical assistant shall function within ~~((his or her))~~ their scope of practice.

~~((4))~~ (3) The medical assistant shall obtain instruction from the delegating health care practitioner and demonstrate competency before performing new or unfamiliar duties which are in ~~((his or her))~~ their scope of practice.

~~((5))~~ (4) The medical assistant shall demonstrate a basic understanding of the patient's rights and responsibilities.

~~((6))~~ (5) The medical assistant must respect the client's right to privacy by protecting confidential information and may not use confidential health care information for other than legitimate patient care purposes or as otherwise provided in chapter 70.02 RCW, the Uniform Health Care Information Act.

~~((7))~~ (6) The medical assistant shall comply with all federal and state laws and regulations regarding patient rights and privacy.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0120, filed 5/31/13, effective 7/1/13.]

NEW SECTION

WAC 246-827-0140 Telemedicine supervision—Activities allowed or prohibited. (1) A medical assistant may be supervised by a health care practitioner through telemedicine supervision during a telemedicine visit. Tasks assigned to the medical assistant by a health care practitioner providing telemedicine supervision must fall within the medical assistant's legal scope of practice. The health care practitioner must ensure the task is delegated appropriately under RCW 18.360.060 and is consistent with the standard of care applicable for those tasks when provided in-person. Some tasks are subject to limitations as required in this chapter.

(2) A medical assistant providing direct patient care under telemedicine supervision is subject to this section only if no other health care practitioner is physically present and immediately available in the place where the medical assistant and patient are located.

(3) A medical assistant may perform the following tasks under telemedicine supervision without a health care practitioner present and immediately available during a telemedicine visit:

- (a) Preparing and maintaining examination and treatment areas;
- (b) Taking vital signs;
- (c) Obtaining and recording patient history;
- (d) Observing and reporting patients' signs or symptoms;
- (e) Preparing patients for examination;
- (f) Instructing patients in proper technique to collect urine or fecal specimens; and
- (g) Obtaining specimens for microbiological testing.

(4) A person employed by a health care practitioner or facility is not practicing as a medical assistant as defined in this chapter if the person only performs the following tasks as part of a telemedicine visit:

- (a) Maintaining medication and immunization records;
- (b) Obtaining and recording patient history;
- (c) Reception;
- (d) Scheduling;
- (e) Screening limited to intake and gathering of information; or
- (f) Similar administrative tasks.

[]

AMENDATORY SECTION (Amending WSR 18-04-080, filed 2/2/18, effective 3/5/18)

WAC 246-827-0200 Medical assistant-certified—Training and examination. An applicant for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education, which includes a minimum of (~~seven hundred twenty~~) 720

clock hours of training in medical assisting skills, including a clinical externship of no less than (~~one hundred sixty~~) 160 hours;

(c) A registered apprenticeship program administered by a department of the state of Washington unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section; (~~or~~)

(d) The secretary may approve an applicant who submits documentation that (~~he or she~~) they completed postsecondary education with a minimum of (~~seven hundred twenty~~) 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than (~~one hundred sixty~~) 160 hours; or

(e) The secretary may approve an applicant who submits documentation that they completed a career and technical education program approved by the office of the superintendent of public instruction with a minimum of 720 clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than 160 hours.

(2) Pass a medical assistant certification examination, approved by the secretary, within the preceding five years of submitting an initial application or currently hold a national medical assistant certification with a national examining organization approved by the secretary. A medical assistant certification examination approved by the secretary means an examination that:

(a) Is offered by a medical assistant program that is accredited by the National Commission for Certifying Agencies (NCCA); and

(b) Covers the clinical and administrative duties under RCW 18.360.050(1).

[Statutory Authority: RCW 18.360.030, 18.360.070, and 18.360.040. WSR 18-04-080, § 246-827-0200, filed 2/2/18, effective 3/5/18. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0200, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

WAC 246-827-0300 Medical assistant-registered—Application.

(~~Registration requirements—Applicants~~) An applicant registering for a medical assistant-registered credential shall submit the following:

(1) A completed application on forms provided by the department;

(2) (a) Proof of completion of high school education or its equivalent; or

(b) Proof of enrollment in a health career training or career and technical education program. The training program must comply with all applicable federal and state regulations related to minors in the workforce.

(3) An endorsement signed by a health care practitioner;

- (4) Any fee required in WAC 246-827-990; and
 (5) Fingerprint cards for national fingerprint based background check pursuant to RCW 18.130.064(2), if requested by the department.

[Statutory Authority: RCW 18.19.050, 18.29.130, 18.29.210, 18.34.120, 18.46.060, 18.55.095, 18.84.040, 18.88B.060, 18.89.050, 18.130.050, 18.138.070, 18.155.040, 18.200.050, 18.205.060, 18.215.040, 18.230.040, 18.240.050, 18.250.020, 18.290.020, 18.360.030, 18.360.070, 70.41.030, 70.230.020, 71.12.670, and 18.108.085. WSR 21-02-002, § 246-827-0300, filed 12/23/20, effective 1/23/21. Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0300, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0400 Medical assistant-phlebotomist—Certification and training. (~~Certification requirements—Applicants~~) An applicant applying for a medical assistant-phlebotomist credential must meet the following requirements:

(1) Successful completion of a phlebotomy program through a post-secondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education; or

(2) Currently hold a national phlebotomy certification from one of the following national examining organizations:

(a) American Certification Agency certification for phlebotomist;
 (b) American Medical Certification Association certification for phlebotomist;

(c) American Medical Technologists certification for phlebotomist;

(d) American Society of Clinical Pathology certification for phlebotomist;

(e) National Center for Competency Testing certification for phlebotomist;

(f) National Healthcareer Association certification for phlebotomist; or

(3) Successful completion of a phlebotomy training program. The phlebotomy training program must be approved by a health care practitioner who is responsible for determining the content of the training and for ascertaining the proficiency of the trainee. The phlebotomy training program must include the following:

(a) Training to include evaluation and assessment of knowledge and skills to determine entry level competency in the following areas:

(i) Responsibilities to be delegated which include ethical implications and patient confidentiality;

(ii) Patient identification process;

(iii) Procedure requesting process, including forms used, accessing process, and collection patterns;

(iv) Materials to be used;

(v) Anatomic considerations for performing such functions as venipuncture, capillary finger collection, and heel sticks;

(vi) Procedural standards and techniques for blood collection;

(vii) Common terminology and practices such as medical classifications, standard diagnoses, test synonyms, background information on procedures, and interferences;

(viii) Physical layout of the work place, including patient care areas; and

(ix) Safety requirements including infection prevention and control, dealing with a client who has an infectious disease, and the handling and disposal of biohazardous materials.

(b) Direct visual supervision by a health care practitioner or a delegated and certified medical assistant-phlebotomist to the trainee to ensure competency in the following:

(i) Practice technique in a simulated situation;

(ii) Observe and perform procedures on patients until the trainee demonstrates proficiency to be certified at the minimum entry level of competency. The trainee must have adequate physical ability, including sufficient manual dexterity to perform the requisite health care services. The number of specific procedures may vary with the skill of the trainee.

(c) Documentation of all phlebotomy training, duties, and responsibilities of the trainee must be completed, signed by the supervising health care practitioner and the trainee, and placed in the trainee's personnel file.

~~(d) ((A trainee must complete the training program and submit an application within ninety days of starting the phlebotomy training program to continue to perform procedures on patients.~~

~~(e))~~ Training programs that meet the requirements described in this subsection are approved by the secretary.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0400, filed 5/31/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0610 Expired credential—Return to active status.

(1) A person holding an expired medical assistant credential may not practice until the credential is returned to active status.

(2) If the medical assistant credential has expired for less than three years, ~~((he or she))~~ they shall meet the requirements of ~~((chapter 246-12 WAC, Part 2))~~ WAC 246-12-020 through 246-12-051.

(3) If the medical assistant credential has been expired for three years or more, and ~~((he or she is))~~ they currently ~~((practicing))~~ practice as a medical assistant in another state or U.S. jurisdiction, ~~((he or she))~~ they shall:

(a) Meet the requirements of ((chapter 246-12 WAC, Part 2,)) WAC 246-12-020 through 246-12-051; and

(b) Provide verification of a current unrestricted active medical assistant credential in another state or U.S. jurisdiction which is substantially equivalent to the qualifications for ((his or her)) the credential in the state of Washington.

(4) If a medical assistant-certified, a medical assistant-hemodialysis technician, or a medical assistant-phlebotomist credential has been expired for three years or more and the person does not meet the requirements of subsection (3) of this section, ~~((he or she))~~ they

shall comply with (~~chapter 246-12 WAC, Part 2,~~) WAC 246-12-020 through 246-12-051 and demonstrate competence in one of the following ways:

(a) A medical assistant-certified must successfully pass an examination as identified in WAC 246-827-0200 within six months prior to reapplying for the credential or currently hold a national medical assistant certification with a national examining organization approved by the secretary.

(b) A medical assistant-phlebotomist must complete the training requirements of WAC 246-827-0400 within six months prior to reapplying for the credential.

(c) A medical assistant-hemodialysis technician must complete the training requirements of WAC 246-827-0500 within six months prior to reapplying for the credential.

(5) If the medical assistant-registered credential has expired, (~~he or she~~) they must also submit a new application as provided for in WAC 246-827-0300.

[Statutory Authority: Chapter 18.360 RCW, RCW 43.70.280, and 2012 c 153. WSR 13-12-045, § 246-827-0610, filed 5/31/13, effective 7/1/13.]

WSR 23-09-063

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed April 18, 2023, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-142.

Title of Rule and Other Identifying Information: WAC 246-853-661 Exclusions. The board of osteopathic medicine and surgery (board) is proposing amendments to expand the types of patients who are exempt from opioid prescribing rules. The proposed language aligns with the Washington medical commission's (WMC) recently adopted rules to ensure consistency and alignment with best practices.

Hearing Location(s): On June 2, 2023, at 9:30 a.m. The board will provide a virtual and a physical location for this hearing. Physical location: Lacey Community Center, Room 1 and 2, 6729 Pacific Avenue S.E., Olympia, WA 98503; or join on your computer, mobile app, or room device. Microsoft Teams meeting [Date of Intended Adoption: June 2, 2023.](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_NDI1MGQ2NWMtZWUxYy00YTI5LTgwOTAtMWE5OGQzZTg5YmVk%2540thread.v2%2F0%3Fcontext%3D%257b%2522tid%2522%253a%25221d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522oid%2522%253a%25223f147261-e44e-4696-9d68-1ecb58823a4d%2522%257d&data=05%7C01%7Cheather.cantrell%40doh.wa.gov%7C6ba54d3e479b40124fbf08db2b0c48cf%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638151103986924579%7CUnknown%7CTWFpbGZsb3d8eyJWJjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IklhaWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=JuRAfkNapDHflhQtasOPGE8Mnrs%2BZVXJVFwIaBmd%2F48%3D&reserved=0, Meeting ID 261 154 277 114, Passcode p8WiJ9; or call in (audio only) +1 564-999-2000,,245423285# United States, Olympia, 833-322-1218,,245423285# United States (toll-free), Phone Conference ID 245 423 285#.</p></div><div data-bbox=)

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 May 26, 2023.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov, by May 26, 2023

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WMC recently adopted opioid prescribing exclusion rules. The board works to remain consistent with WMC rules, as osteopathic physicians and allopathic physicians regularly provide care in the same settings. Furthermore, striving for consistency with WMC makes rules easier for licensees to understand and comply with in the complex health care regulatory environment.

As part of WMC's rule making for ESHB 1427, WMC received comments stating that adhering to the opioid prescribing rules for patients admitted to long term acute care (LTAC) and nursing homes is onerous. Specifically, the rules require a history and physical, as well as a check of the prescription monitoring program, be completed prior to prescribing opioids. It has been stated that patients transferred to LTACs and nursing homes had a history and physical while in the previous facility and that practitioners in LTACs and nursing homes can rely on that assessment.

Inpatient hospital patients are currently exempt from the opioid prescribing rules. WMC and the board recognize that patients in LTACs and nursing homes are similarly situated to hospital patients receiving inpatient treatment.

WMC also received a comment regarding patients in residential habilitation centers (RHC) that they are also similarly situated to LTAC and nursing home patients. They received a similar comment about residential treatment facilities (RTF), that stated RTFs are similar to RHCs, except the stay at an RTF is usually short-term. As such, the board is also proposing exempting patients in RHCs and RTFs.

Exempting patients in LTACs and nursing homes from the opioid rules simply allows the practitioners in these facilities to continue the patient's pain medications without having to wait for a physician to perform a history and physical. It is standard for a nursing home or LTAC to have a physician conduct a history and physical within 30 days of admission. Exempting patients in nursing homes and LTACs from the opioid rules does not exempt a physician at these facilities from complying with the applicable standard of care. The physician would be expected to conduct a history and physical to assess the patient's functioning within a short time after admission. LTAC is mainly for patients who were in intensive care in the hospital. These are sick patients in need of intensive care for an extended period of time.

Reasons Supporting Proposal: The proposed rules are necessary to ensure best practice and standards of care and remove unnecessary regulatory barriers when prescribing opioids for patients in LTACs. The rules align osteopathic physician rules to those of allopathic physicians, which avoids confusion for physicians practicing in the same settings.

Statutory Authority for Adoption: RCW 18.57.005, 18.57.800, and 18.130.050.

Statute Being Implemented: RCW 18.57.005, 18.57.800, and 18.130.050.

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: None.

Name of Proponent: DOH, board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Bechy [Becky] McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

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).

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2023
U. James Chaney
Executive Director

OTS-4251.1

AMENDATORY SECTION (Amending WSR 18-20-087, filed 10/1/18, effective 11/1/18)

WAC 246-853-661 Exclusions. WAC 246-853-660 through 246-853-790 do not apply to:

- (1) The treatment of patients with cancer-related pain;
- (2) The provision of palliative, hospice, or other end-of-life care;
- (3) ~~((The treatment of inpatient hospital patients. As used in this section, "inpatient" means a person who has been admitted to a hospital for more than twenty-four hours; or~~
- ~~(4))~~ The provision of procedural premedications;
- (4) The treatment of patients who have been admitted to any of the following facilities for more than 24 hours:
 - (a) Acute care hospitals licensed under chapter 70.41 RCW;
 - (b) Psychiatric hospitals licensed under chapter 71.12 RCW;
 - (c) Nursing homes licensed under chapter 18.51 RCW and nursing facilities as defined in WAC 388-97-0001;
 - (d) Long-term acute care hospitals as defined in RCW 74.60.010;
- or
- (e) Residential treatment facilities as defined in RCW 71.12.455;
- or
- (5) The treatment of patients in residential habilitation centers as defined in WAC 388-825-089 when the patient has been transferred directly from a facility listed in subsection (4) of this section.

[Statutory Authority: RCW 18.57.800, 18.57A.800 and 2017 c 297. WSR 18-20-087, § 246-853-661, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.57.285, 18.57A.090, 18.57.005, 18.57A.020. WSR 11-10-062, § 246-853-661, filed 5/2/11, effective 7/1/11.]

WSR 23-09-065
PROPOSED RULES
GAMBLING COMMISSION
[Filed April 19, 2023, 8:00 a.m.]

Supplemental Notice to WSR 23-03-060.

Preproposal statement of inquiry was filed as WSR 22-17-079.

Title of Rule and Other Identifying Information: Amend WAC 230-15-140 Wagering limits for house-banked card rooms.

Hearing Location(s): On July 20, 2023, at 9:30 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location is tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: July 20, 2023.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by July 14, 2023.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by July 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment would increase the maximum wagering limit for house-banked card games from \$300 to \$400 for a single wager.

Reasons Supporting Proposal: The gambling commission received a petition from a licensee proposing to raise wagering limits for house-banked card games. Wagering limits have not been increased since 2009. According to the petitioner, the cost of doing business has increased significantly since 2009 to include higher minimum wages food and beverage costs, along with other costs associated with running a card room/business.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Vicki Christophersen, representing Maverick Gaming in Kirkland, Washington, public.

Name of Agency Personnel Responsible for Drafting: Lisa C. McLean, Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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 per RCW 34.05.328 (5) (a) (i).

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: RCW 9.46.0282 gives the gambling commission the authority to establish rules for card games, including rules related to the limitation of wagers.

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2023

OTS-4274.1

OPTION C

AMENDATORY SECTION (Amending WSR 21-11-057, filed 5/14/21, effective 6/14/21)

- WAC 230-15-140 Wagering limits for house-banked card games.** (1)
A single wager must not exceed (~~three hundred dollars~~) \$400.
- (2) A player may make a single wager for each decision before the dealer deals or reveals additional cards. Wagers must be placed on the table layout on an approved betting spot, except for:
- (a) In Blackjack games, players may place an additional wager next to their original wager when doubling down or splitting pairs; or
 - (b) Tip wagers made on behalf of a dealer; or
 - (c) As authorized in approved card games rules.

[Statutory Authority: RCW 9.46.070. WSR 21-11-057, § 230-15-140, filed 5/14/21, effective 6/14/21; WSR 08-20-025 (Order 631), § 230-15-140, filed 9/19/08, effective 1/1/09; WSR 07-09-033 (Order 608), § 230-15-140, filed 4/10/07, effective 1/1/08.]

WSR 23-09-067

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 22-07—Filed April 19, 2023, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-041.

Title of Rule and Other Identifying Information: Chapter 173-50 WAC, Accreditation of environmental laboratories. For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-50>.

Hearing Location(s): On May 25, 2023, at 9 a.m. - 12 p.m., webinar. Presentation and question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Register here <https://waecy-wa-gov.zoom.us/meeting/register/tZYocOmurDojHtEDkyIcpuhpCfIiVJugpOPF>. Once registered, for audio call United States Toll number 1-253-215-8782. Enter the meeting ID of 825 7062 1945, and enter passcode 174911; and on May 31, 2023, at 1 p.m. - 4 p.m., webinar. Presentation and question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Register here <https://waecy-wa-gov.zoom.us/meeting/register/tZUvcuGorj8iE92rKsKlGMePhXKdBw34pJVO>. Once registered, for audio call United States Toll number 1-253-215-8782. Enter the meeting ID of 812 5800 4899, and enter passcode 174911.

Date of Intended Adoption: August 28, 2023.

Submit Written Comments to: Ryan Zboralski, P.O. Box 488, Manchester, WA 98353-0488, email ryan.zboralski@ecy.wa.gov, by June 7, 2023.

Assistance for Persons with Disabilities: Contact the department of ecology's (ecology) ADA Coordinator, phone 360-407-6831, TTY 877-833-6341, email ecyadacoordinator@ecy.wa.gov, by May 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments would achieve the following goals:

Amend wording in existing sections and add new sections to increase clarity and to incorporate existing best practices, quality control, and rules for participation in the lab accreditation program, including:

- Updates and clarifications to definitions.
- Require laboratories to submit standard operating procedures (SOPs).
- Update and clarify quality control requirements.
- Add data management and record traceability requirements.
- Require additional proficiency testing (PT) sample per parameter per year for microbiology parameters.
- Clarify procedural requirements for PT.
- Clarify and update audit procedures and frequency.
- Clarify requirements for accreditation of drinking water laboratories.
- Clarify that laboratories must notify ecology at least 30 days prior to a permanent laboratory move.
- Update reasons for suspension of accreditation to include: violation of federal law.

Amend the fee structure to meet current ecology laboratory accreditation unit (LAU) implementation costs and address the need to increase fees to cover future cost increases.

Clarification of existing rule language and updating references.

Reasons Supporting Proposal: Ecology's LAU provides accreditation services and support to environmental labs across the state. These labs provide data that are necessary to support decisions made by regulatory bodies tasked with the protection of the people and resources within Washington state. The data produced by these labs require a high level of precision and accuracy, which in turn requires a rigorous accreditation process by ecology's LAU. Additionally, the emergence of contaminants of concern, such as 6-PPD Quinone, have added to the complexity of laboratory analysis and the accreditation process. The process required to accredit labs is a large part of the important work that ecology does to ensure that the data that these labs produce are accurate and defensible.

- The existing rule is not clear about some of the required documentation and other requirements ecology's LAU expects. Specifically, it is critical that laboratories have a SOP for each method they are seeking accreditation. This document ensures that the laboratories are adhering to the same procedures and quality control practices whenever they are performing that specific method and are being transparent in how they apply that method.
- Many nondrinking water laboratories have gone several years since their last audit. Audits are critical to provide LAU with the ability to see the laboratory "in action," and ensure that their SOPs accurately reflect the work done in the lab. The rule revision makes it clear that all labs are to return to a triennial audit schedule.
- This rule making increases LAU's ability to enforce necessary changes when the unit determines a laboratory is not meeting our standard. Laboratories occasionally require a codified standard for them to make an accreditation change requested by LAU to prevent harm to the communities or environment of Washington state. The new sections in the rule accomplish this.
- With the current fee structure, LAU is unable to recover its operating costs. The workload has steadily increased and gained complexity since the last rule making in 2010. This is due to additional labs seeking accreditation, as well as emerging pollutants that require a more rigorous accreditation process. Not only is our fee structure insufficient with the current staff, more staff are necessary to return all laboratories to a triennial audit schedule. The proposed fee structure funds an LAU capable of supporting the current workload and added workload of returning to a triennial audit schedule. The structure also has the ability to grow over time using the state's fiscal growth factor to minimize the need to return to rule making in the future to change the fee structure.
- The addition of the fiscal growth factor will also enable ecology to implement fee increases on an annual basis, outside of a laboratory's yearly accreditation cycle or in association with an out-of-state audit. The fee structure also does not cover work performed in unsuccessful or prolonged accreditations. The new fee structure includes fees to cover costs in these instances.

Statutory Authority for Adoption: Chapter 43.21A.230 Certification of environmental laboratories authorized—Fees—Use of certified laboratories by persons submitting data or results to department.

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 Proponent: Ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Ryan Zboralski, Manchester, 360-764-9364; Enforcement: Rebecca Wood, Manchester, 360-742-7022.

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 Ryan Zboralski, P.O. Box 488, Manchester, WA 98353-0488, phone 360-764-9364, email ryan.zboralski@ecy.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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; 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 rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: We analyzed the impacts of the proposed rule amendments relative to the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline and reflects the most likely regulatory circumstances that entities would face if the proposed rule was not adopted.

2.2 Baseline: The baseline for our analyses generally consists of existing rules and laws and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

For this rule making, the baseline includes:

- The authorizing statute, RCW 43.21A.230 Certification of environmental laboratories authorized—Fees—Use of certified laboratories by persons submitting data or results to department. This statute:

- Authorizes ecology to certify environmental laboratories that conduct tests or prepare data for submittal to ecology.
- Authorizes ecology to charge fees for certification to cover costs.
- Allows certification to consider:
 - Protocols and procedures.
 - Accuracy and reliability of test results, including internal quality assurance and quality control procedures and proficiency at analyzing test samples.
 - Prior certification by another state or federal agency whose certification requirements are deemed satisfactory.
 - Other appropriate factors.
- Authorizes ecology to require that any person submitting laboratory data or test results use laboratories certified by ecology or that participate in quality assurance programs administered by the Environmental Protection Agency (EPA).
- Limits annual certification fees to the smaller of actual costs and \$4,000 for entities with a federal wastewater discharge permit that operate a laboratory solely for their own use, and who require certification for only conventional pollutants.
- The existing rule, chapter 173-50 WAC, Accreditation of environmental laboratories.
- Related Washington state requirements including, but not limited to:
 - RCW 43.21A.445 Departments authorized to participate in and administer federal Safe Drinking Water Act—Agreements with other departments.
- Related federal requirements, including but not limited to:
 - 42 U.S.C. Sec. 300h et seq., Safe Drinking Water Act.
 - 40 C.F.R. Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants.
 - 40 C.F.R. Part 141, National Primary Drinking Water Regulations.

2.3 Proposed rule amendments: 2.3.1 Definitions: Baseline: The baseline rule and law include multiple definitions to support implementation.

Proposed: The proposed rule amendments would add definitions or update existing ones. These changes would clarify definitions based on implementation experience and update or add them to reflect current versions of documents or to support proposed new requirements.

2.3.2 Responsibilities of environmental laboratories: Baseline: The baseline law and rule set requirements for laboratories when they apply for initial accreditation, including requirements for:

- Application.
- Quality assurance (QA) manual.
- PT sample results.
- On-site audit.

Proposed: The proposed rule amendments would add or amend the following requirements for initial accreditation:

- Submission of SOPs.
- Some audits would no longer be on site. Audits could be remote unless ecology determines an on-site audit is necessary.

2.3.3 Quality control practices: Baseline: The baseline rule does not include explicit requirements for QC practices.

Proposed: The proposed rule amendments would add the following requirements for quality control practices.

- Development and documentation of SOPs for each analytical method.
- Multilevel calibration requirements (if applicable).
- Limit of quantification requirements for analytical methods that do not already specify them.
- Matrix spike requirements as specified by analytical method.
- Requirements for laboratory control samples, including when high-biased sample data can be reported.
- Documentation of resolution of spectral interferences inductively coupled plasma - optical emission spectrometry (ICP-OES).

2.3.4 Data and record traceability: Baseline: The baseline rule does not include explicit requirements for data and record traceability.

Proposed: The proposed rule amendments would add the following requirements for data and record traceability. Laboratories must:

- Be able to recreate final sample results by means of records in entirety.
- Document proper storage of any chemical, reagent, and/or used by an analytical method.
- Document proper storage of samples as required by the specific analytical method and/or regulation.
- Document that all temperature-based equipment such as a refrigerator, oven, or incubator is both within control and checked manually as required by the relevant analytical method.
- Keep logbooks for any and all instruments, including documentation of installation, setup, maintenance, and removal from service.
- Document proper preparation and QC of chemicals, reagents, and media used in support of the analyses.
- Not use "erasable" handwritten records; requirement of traceable and secure format for electronic records.

2.3.5 Proficiency testing: Baseline: The baseline law and rule include requirements for PT, including, but not limited to:

- Acceptable use of previous PT studies.
- Minimum number and frequency of PT samples.
- Potential for raw data submission.
- Waivers for certain parameters if two or more PT samples do not exist or for other valid reasons.
- Approved PT sample vendors.

Proposed: The proposed rule amendments would add one PT sample per parameter per year for microbiology parameters.

2.3.6 Audits: Baseline: Under the baseline, all audits are on site. We note that this has been limited by LAU funding and resources, resulting in audits of only laboratories accredited for drinking water analyses undergoing audits every three years (per EPA requirement).

Proposed: Under the proposed rule amendments, audits would not automatically all be on site. Ecology would continue to audit laboratories accredited for drinking water analyses on site but would otherwise perform on-site audits only when necessary (laboratory does not have appropriate resources for remote audit; remote audit may not capture applicable concerns; etc.).

Audits would occur at least every three years at all laboratories directly accredited by ecology (i.e., not accredited by ecology through third-party recognition), and any requested documentation, including at least SOPs and analytical data, would need to be submitted at least two weeks before the audit.

2.3.7 Interim accreditation: Baseline: The baseline law and rule include requirements for interim accreditation, including submission of:

- Application and fees.
- PT.
- QA manual.
- Potential analytical data package.

Proposed: The proposed rule amendments would add submission of applicable SOPs as a requirement for interim accreditation.

2.3.8 Maintaining accreditation status: Baseline: The baseline law and rule include requirements for maintaining accreditation status, including:

- Definition of accreditation period (one year) and expiration.
- Renewal requirements.
- Three-year audit frequency for laboratories accredited for drinking water parameters (as required by EPA).
- Audit frequency determined by ecology for laboratories accredited for nondrinking water parameters.

Proposed: The proposed rule amendments would:

- Clarify that laboratories that plan to permanently move are subject to the same accreditation requirements as new labs, since accreditation is inherently specific to the laboratory location.
- Require laboratories planning to permanently move to notify ecology at least 60 days before new accreditation is needed.
- Add flexibility for temporary or emergency laboratory moves, identifying that they would be handled on a case-by-case basis.

2.3.9 Revoking or suspending accreditation: Baseline: The baseline law and rule include requirements for revoking or suspending accreditation, including:

- Definitions of revocation and suspension.
- Reasons for suspension or revocation:
 - Failure to comply with audit standards.
 - Violation of state rules.
 - Misrepresentation.
 - Falsification of reports.
 - Unethical or fraudulent practices.
 - Deficiencies in accuracy and defensibility of data.
 - Refusal to permit enforcement entry.
 - Failure to pay fees.
 - Failure to maintain third-party accreditation.
 - Two consecutive unsatisfactory PT results.

Proposed: The proposed rule amendments would add violation of federal law to the baseline list of reasons for suspension or revocation.

2.3.10 Fee structure: Baseline: The baseline law and rule include the fee structure and specific fees associated with laboratory accreditation. These fees and structure were developed during the last amendments made to this rule, in 2010, to reflect the program costs at

that time. They include minimum (\$300) and maximum (variable by parameter) fees.

Proposed: The proposed rule amendments would:

- Remove maximum fees.
- Phase in fee increases beginning in fiscal year (FY) 2024 (July 1, 2024).
- Increase fees beginning in FY 2026 according to the state's fiscal growth factor.
- Increase minimum fees to \$500.
- Add a fee of \$300 for reaccreditation after 12 months of not being accredited.

2.3.11 Changes with no material impact: Baseline: The baseline rule includes wording that ecology identified, over a decade of implementing the program since the last rule revision (2010), as needing clarification to facilitate efficient compliance.

Proposed: The proposed rule amendments would make changes to wording and structures in the rule, that would not affect rule requirements. These include, but are not limited to clarification that:

- Drinking water parameter accreditation must follow the EPA Manual for the certification of laboratories analyzing drinking water.
- Appropriate basic laboratory and statistical methods must be used.
- PT samples must follow the same preparation and analytical processes as client samples.
- Audits for third-party accreditation are done by the relevant accrediting authority.
- Fees reflect costs of work done outside the normal application/renewal points of contact.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by the Regulatory Fairness Act (RFA), chapter 19.85 RCW, as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment; the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

This information is excerpted from ecology's complete set of regulatory analyses for this rule making. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the associated regulatory analyses document

(Ecology publication no. 23-03-010, April 2023) We have retained section numbers here for easy cross-reference.

COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: 2.3.1 Definitions: Definitions do not, in and of themselves, create regulatory requirements; definitions support requirements set elsewhere in the rule. Where definitions contribute to the impacts of rule requirements, the overall impacts of those requirements are discussed in the sections below.

We note also that the proposed rule amendments would update the date of the relevant procedural manual. As this manual is a living document that stays up-to-date with good practice and appropriate processes, maintenance of the external reference allows for timely updates to practices that do not necessitate repeated time-consuming rule-making processes.

We expect the proposed rule amendments to result in costs of additional time to submit SOPs, as well as benefits of verified SOP documentation. They would also result in reduced costs associated with audits if they are remote rather than on-site.

2.3.3 Quality control practices: We expect these proposed amendments (new requirements) to result in labor costs associated with the additional time and effort necessary to perform these tasks or perform existing tasks using the required procedures. We expect them to result in benefits of ensuring a baseline of data quality across all laboratories accredited by ecology, as they reflect both best practice and consistency with methods used, as well as consistency with other regulatory contexts.

2.3.4 Data and record traceability: We expect these proposed amendments (new requirements) to result in labor costs associated with the additional time and effort necessary to perform these tasks or perform existing tasks using the required procedures. We expect them to result in benefits of high-quality records that survive legal scrutiny, as could potentially be involved in noncompliance, penalties, lawsuits, and other regulatory or legal contexts that could be faced by the laboratory or its customers. This includes a shift from exclusive use of automated data loggers in lieu of manual checking, to reduce uncaught temperature errors for incubators, as there is a narrow range of acceptable temperatures to which the loggers are not sufficiently sensitive.

2.3.5 Proficiency testing: We expect these proposed rule amendments to result in costs of additional PT analysis, as well as benefits of microbiology parameter PT consistent with chemistry parameter PT number and frequency under the baseline. The latter would result in increased confidence in the quality and reliability of microbiology analyses to be consistent with chemistry analyses.

2.3.6 Audits: We expect these proposed rule amendments to result in additional time costs associated with the time and effort (at non-drinking water labs) necessary to undergo audits at least every three years, mitigated by benefits (avoided costs) of those audits not necessarily being on site. We also expect minor timing costs associated with when documentation is submitted to ecology, and benefits of adequate preparation for audits and resulting audit effectiveness.

2.3.7 Interim accreditation: We expect these proposed rule amendments to result in costs of additional time to submit SOPs in cases of interim accreditations, as well as benefits of verified SOP documentation in those cases.

2.3.8 Maintaining accreditation status: We expect these proposed rule amendments to result in timing costs associated with notification

of planned moves, and benefits of adequate time to complete necessary accreditation review without creating a gap in accreditation.

2.3.9 Revoking or suspending accreditation: We do not expect this proposed rule amendment to result in significant costs or benefits, as it is in line with violation of state law as a reason for suspension or revocation.

2.3.10 Fee structure: We expect these proposed rule amendments to result in costs of increased fees, as well as benefits of full funding of the LAU and the services it provides.

2.3.11 Changes with no material impact: We do not expect these proposed rule amendments to result in costs or benefits beyond clarity.

COSTS OF COMPLIANCE: EQUIPMENT, PROFESSIONAL SERVICES: Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment or professional services.

COSTS OF COMPLIANCE: SUPPLIES: 3.2.5 Proficiency testing: We expect this proposed rule amendment to result in costs of additional PT analyses.

We assumed laboratories with microbiology parameters would need to perform between one and five additional PT analyses per year. Based on ecology accreditation records, there are currently 255 such labs. We surveyed product catalogs at PT sample providers that meet existing PT requirements, identifying an average cost per microbiology PT sample of \$105. This resulted in total annual costs of \$27,000 to \$134,000 across all impacted labs.

COSTS OF COMPLIANCE: LABOR: 3.2.2 Responsibilities of environmental laboratories: We expect the proposed rule amendments to result in costs of additional time to submit SOPs. They would also result in reduced costs associated with audits if they are remote rather than on site.

We assumed it would take two to four hours of laboratory management or QA officer time to complete the additional work required under these amendments. At an hourly wage of \$41.90, at the 467 existing accredited labs, this would be \$39,000 to \$78,000.

Ecology reflects streams of costs over time as 20-year present values. A present value converts future costs to current values accounting for inflation as well as the opportunity cost of having funds later rather than now. Over 20 years, the present value equivalent of the annual costs above is \$0.7 to \$1.4 million.

3.2.3 Quality control practices: We expect these proposed amendments to result in labor costs associated with the additional time and effort necessary to perform these tasks or perform existing tasks using the required procedures.

We assumed it would take 40 to 120 hours of laboratory management or QA officer time to complete the additional work required under these amendments, if a lab does not already follow these procedures. At an hourly wage of \$41.90, if this cost was incurred at all 467 existing accredited labs, this would be \$0.8 million to \$2.3 million. We expect that many labs already follow the proposed quality control procedures, and so would not incur these additional costs, but we could not make a confident assumption about the percentage of labs for which this is the case. Given this uncertainty, we have taken a conservative approach (potentially overestimating costs), and identified that total annual costs would likely be less than this range.

3.2.4 Data and record traceability: We expect these proposed amendments to result in labor costs associated with the additional time and effort necessary to perform these tasks or perform existing tasks using the required procedures. This includes a shift from exclusive use of automated data loggers in lieu of manual checking.

We assumed it would take four to eight hours of laboratory analyst or technician time to complete the additional overall practice work required under these amendments. At an hourly wage of \$32.17, we assumed that 10 percent of the laboratories would need to improve these practices resulting in costs of \$5,000 to \$11,000. This is based on the acknowledgment and corresponding assumption that 90 percent of laboratories already follow the proposed data and record traceability procedures, and so would not incur additional costs.

In place of an automatic data logger, we assumed it would take 50 to 100 hours of laboratory analyst or technician time to complete additional work under these amendments. At an hourly wage of \$32.17, we assumed that 10 percent of the laboratories would need to improve these practices resulting in costs of \$67,000 to \$135,000. This is based on the understanding and corresponding assumption that most laboratories do not suffer issues with data quality due to use of automatic data loggers, and so would not incur additional costs. This element of the proposed rule intends to improve the quality of records and traceability at the relatively few labs for whom data loggers cause issues.

3.2.6 Audits: We expect these proposed rule amendments to result in additional time costs associated with the time and effort (at non-drinking water labs) necessary to undergo audits at least every three years, mitigated by benefits (avoided costs) of those audits not necessarily being on site. We also expect minor timing costs associated with when documentation is submitted to ecology.

To reflect a shift to remote audits, we assumed the following levels of effort:

Table 1. Assumed time spent on audits (remote):

Emp category	Task	Hours
Ecology auditor	Preparation for audit	2-16
Ecology auditor	Travel to lab	0
Ecology auditor	Audit	3-16
Ecology auditor	Reporting and corrective action response	3-24
Management/QA officer	Preparation for audit	2-8
Analyst/technician	Audit	3-16
Management/QA officer	Audit	3-16
Analyst/technician	Corrective action response	2-16
Management/QA officer	Corrective action response	2-16

We assumed that one-third of laboratories accredited only for nondrinking water parameters (one-third: 114 labs) would be audited each year. These laboratories would incur the costs of remote audits, with associated staff wages of:

Table 2. Staff wages:

Position	Wage
Ecology auditor	\$43.62 (\$80.39 including overhead)
Management/QA officer	\$41.90 (\$77.38 including overhead)
Analyst/technician	\$32.17 (\$54.52 including overhead)

The total estimated costs associated with these rule amendments was \$166,000 to \$1.1 million (including overhead costs), of which

\$73,000 to \$0.5 million would be costs incurred by ecology (funded by fees), and \$40,000 to \$0.5 million would be costs incurred directly by labs.

Note that by making audits no longer necessarily on site, the proposed rule amendments could reduce costs associated with audits by \$9,000 to \$110,000 per year if all labs were remotely audited, compared to what the above costs would be if all audits remained on-site. (See Section 4.2.6 for discussion.)

3.2.7 Interim accreditation: We expect these proposed rule amendments to result in costs of additional time to submit SOPs in cases of interim accreditations. As these costs would be incurred as part of proposed amendments to regular accreditation, they are already reflected in the cost estimate discussed in Section 3.2.2.

3.2.8 Maintaining accreditation status: We expect these proposed rule amendments to result in timing costs associated with notification of planned moves. We note, however, these would not be significant additional costs, as compared to the baseline, but rather opportunity costs of expenditures at different times. The table below illustrates the opportunity costs associated with spending one dollar at various delayed times.

Table 3. Difference in the present value of a dollar at different times:

<i>Delay (weeks)</i>	Present Value (cents)	Difference (cents)
0	100.00	0.00
1	99.98	0.02
2	99.97	0.03
3	99.95	0.05
4	99.93	0.07
5	99.91	0.09
6	99.90	0.10

COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS: Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

COSTS OF COMPLIANCE: OTHER: 3.2.10 Fee structure: We expect these proposed rule amendments to result in costs of increased fees.

The tables below summarize baseline and proposed fees and fee structure, including elimination of maximum fees.

Table 4. Baseline fees (and equivalent with inflation):

Category	Fee Per Parameter	Fee Per Method	Max Fee
General chemistry	\$80 (\$110)	n/a	\$1,600 (\$2,209)
Trace metals	n/a	\$400 (\$552)	n/a
Organics I	n/a	\$200 (\$276)	n/a
Organics II	n/a	\$500 (\$690)	n/a
Microbiology	\$200 (\$276)	n/a	n/a
Radiochemistry	\$250 (\$345)	n/a	n/a
Bioassay	\$300 (\$414)	n/a	\$3,000 (\$4,142)
Immunoassay	\$80 (\$110)	n/a	n/a
Physical	\$80 (\$110)	n/a	n/a

Table 5. Proposed fees for Fiscal Year 2024:

<i>Category</i>	Fee Per Parameter	Per Parameter Add Fee to Existing Method	Fee Per Method
<i>General chemistry</i>	\$150	—	—
<i>Trace metals</i>	—	\$30	\$745
<i>Organics I</i>	—	\$15	\$375
<i>Organics II</i>	—	\$35	\$930
<i>Microbiology</i>	\$375	—	—
<i>Radiochemistry</i>	\$555	—	—
<i>Bioassay</i>	—	\$15	\$375
<i>Immunoassay</i>	\$150	—	—
<i>Physical</i>	\$150	—	—

Table 6. Proposed fees for Fiscal Year 2025:

<i>Category</i>	Fee Per Parameter	Per Parameter Add Fee to Existing Method	Fee Per Method
<i>General chemistry</i>	\$220	—	—
<i>Trace metals</i>	—	\$55	\$1,085
<i>Organics I</i>	—	\$30	\$545
<i>Organics II</i>	—	\$70	\$1,355
<i>Microbiology</i>	\$545	—	—
<i>Radiochemistry</i>	\$680	—	—
<i>Bioassay</i>	—	\$25	\$445
<i>Immunoassay</i>	\$220	—	—
<i>Physical</i>	\$220	—	—

During the development of the proposed rule, we estimated the difference in fees at 15 representative types of laboratories, reflecting variable laboratory size, degree of direct versus third-party accreditation, and customer type. This difference was based on a set of fees per parameter and added parameters to an existing method and methods that were on average 33 percent higher than proposed FY 2024 fees and 13 percent lower than proposed FY 2025 fees.

Baseline fees reflected FY 2022 estimated accreditation renewal costs or actual 2022 renewal invoices. The table below summarizes the descriptive statistics for the percentage increase in fees (estimated proposed fee minus baseline fee, as a proportion of baseline fee) under the proposed rule, for a representative laboratory. These estimates also accounted for fees charged on a method basis versus a parameter basis.

Table 7. Percentage increase in representative fees, per laboratory:

Statistic	2024 Increase from Baseline	2025 Increase from Baseline
Average	136%	206%
Minimum	90%	137%
Median	122%	184%
Maximum	251%	381%

Total laboratory accreditation fee revenues for FY 2022 were \$881,464. Using the average increase in estimated fees, and this baseline total fee value, the proposed rule would result in an average increase in total fees charged (across all laboratories) of \$1.2 million in FY 2024 and \$1.8 million in FY 2025. Considering the overall range of percentage increases estimated, the overall range of fee increases could be between \$0.8 million and \$3.4 million.

Fees beginning in FY 2026 would be based on the previous year's fees and the state's fiscal growth factor, as determined by the Washington state economic and revenue forecast council (ERFC). The average nominal fiscal growth factor in the ERFC's 2021 economic forecast was 5.88 percent. We applied this fiscal growth factor to the estimated range of fee increases in FY 2025 and in subsequent years. The 20-year present value of fee increases under the proposed rule is a median of \$100.6 million.

We note that our estimation methodology holds the current number of labs, methods, and parameters constant for each year in the future. We were not able to confidently forecast future growth in laboratories, methods, or parameters, so holding this value constant was necessary to be able to estimate the costs of the proposed amendments to fees. While the endpoints of ranges reflect estimates based on implicit assumptions that all laboratories experience fee increases of the same percentage size as the smallest laboratories or the largest laboratories, this range also allows us to capture potential variance in laboratories and their accreditation attributes.

If there is an overall growth within or across the accredited laboratories beyond these assumptions and range, it is possible that total fee collections will ultimately fail to meet the funding needs of LAU workload. This is because fees are set in rule, and they would not be able to adapt in response to expanding needs and workload. This means the costs (fees charged) estimated above would not change over time, but LAU workload would increase nonetheless, potentially resulting once again in accreditation backlogs or other service limitations.

COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES: We calculated the estimated per-business costs to comply with the proposed rule amendments, based on the costs estimated in Chapter 3 of this document. In this section, we estimate compliance costs per employee.

The average affected small business likely to be covered by the proposed rule amendments employs approximately 11 people. The largest 10 percent of affected businesses employ an average of 205,249 people at their highest ownership level. Based on cost estimates in Chapter 3, we estimated the following compliance costs per employee.

Table 8. Compliance costs per employee:

<i>Type of cost</i>	Low	High
<i>Small business cost per employee</i>	\$598	\$2,084
<i>Largest business cost per employee</i>	\$0.03	\$0.11

We conclude that the proposed rule amendments are likely to have disproportionate impacts on small businesses. Therefore, ecology is required to consider legal and feasible options to reduce this burden, as discussed in Section 7.4.

CONSIDERATION OF LOST SALES OR REVENUE: Businesses that would incur costs could experience reduced sales or revenues if the proposed rule amendments significantly affect the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on directly affected markets, accounting for dynamic adjustments throughout the economy. The model accounts for: Interindustry impacts; price, wage, and population changes; and dynamic adjustment of all economic variables over time.

The proposed rule amendment would primarily charge fees to businesses in the "Management, scientific, and technical consulting services" industry. The results of REMI E3+ model show that the rule amendments would impact a variety of businesses (see 7.6, below) and that they would cost an estimated \$3-37 million annually in output across all industries in the state. In 2023, Washington is estimated to have an output of \$1.06 trillion and \$1.53 trillion in 2043. Below are the industries that would have the highest estimated impact on their output. We note that the sector that captures laboratories, "Management, Scientific, and Technical Consulting Services," would see the value of their output affected by less than one-tenth of one percent.

Table 9. Modeled impacts to the value of output, percent of baseline:

Industry	Initial Output Impact	Output Impact in 10 Years	Output Impact in 20 Years
All industries	-0.001%	-0.002%	-0.002%
3259 - Other chemical product and preparation manufacturing	-0.002%	-0.014%	-0.017%
2213 - Water, sewage, and other systems	-0.002%	-0.012%	-0.016%
3222 - Converted paper product manufacturing	-0.001%	-0.005%	-0.006%
3221 - Pulp, paper, and paperboard mills	-0.001%	-0.004%	-0.006%
5416 - Management, scientific, and technical consulting services	-0.001%	-0.004%	-0.004%

MITIGATION OF DISPROPORTIONATE IMPACT: RFA states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- a) Reducing, modifying, or eliminating substantive regulatory requirements;
- b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- c) Reducing the frequency of inspections;
- d) Delaying compliance timetables;
- e) Reducing or modifying fine schedules for noncompliance; or
- f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

We considered all of the above options, the goals and objectives of the authorizing statutes (see Chapter 6), and the scope of this rule making. We limited compliance cost-reduction methods to those that:

- Are legal and feasible.

- Meet the goals and objectives of the authorizing statute.
- Are within the scope of this rule making.

Modifying regulatory requirements, changing reporting requirements, reducing the frequency of inspections, or delaying compliance timetables would not meet statutory objectives or are not feasible and within the scope of this rule making.

While the scope and authorization for this rule limited ecology's options in reducing the disproportion of compliance cost burden, we note that the cost estimation (see Chapter 3) is based in part on a range of representative labs. This range is based on a sample of the overall laboratory population, and may overestimate the relative numbers or types of analytes (and thus, fees) for very small, independent labs. Some small laboratories are currently accredited for as few as one analyte, as necessary for their internal work, and this would naturally reduce their costs per employee even further than the costs estimated for a representative small laboratory in the table above.

SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION: We involved small businesses and local governments in the development of the proposed rule amendments, using:

- Three stakeholder workshops held in November and December 2022 with representatives from 39 different organizations and 64 different local governments or their departments.
- An informal public comment period held from November 2, 2022, to January 4, 2023.
- Email communications to all permittees.

NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE: The proposed rule amendments likely impact the following industries, with associated North American Industry Classification System (NAICS) codes. NAICS definitions and industry hierarchies are discussed at <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?chart=2017>.

Table 10. NAICS codes of affected laboratories or their owners:

NAICS Code	Description
1119	Other Crop Farming
1151	Support Activities for Crop Production
2211	Electric Power Generation, Transmission, and Distribution
2213	Water, Sewage, and Other Systems
2382	Building Equipment Contractors
2383	Building Finishing Contractors
2389	Other Specialty Trade Contractors
3114	Fruit and Vegetable Preserving and Specialty Food Manufacturing
3116	Animal Slaughtering and Processing
3219	Other Wood Product Manufacturing
3221	Pulp, Paper, and Paperboard Mills
3222	Converted Paper Product Manufacturing
3241	Petroleum and Coal Products Manufacturing
3251	Basic Chemical Manufacturing
3252	Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing
3272	Glass and Glass Product Manufacturing
3313	Alumina and Aluminum Production and Processing
3314	Nonferrous Metal (except Aluminum) Production and Processing
3328	Coating, Engraving, Heat Treating, and Allied Activities
3331	Agriculture, Construction, and Mining Machinery Manufacturing

3364 Aerospace Product and Parts Manufacturing
 4245 Farm Product Raw Material Merchant Wholesalers
 4452 Specialty Food Retailers
 4571 Gasoline Stations
 5413 Architectural, Engineering, and Related Services
 5416 Management, Scientific, and Technical Consulting Services
 5417 Scientific Research and Development Services
 5419 Other Professional, Scientific, and Technical Services
 5617 Services to Buildings and Dwellings
 5622 Waste Treatment and Disposal
 5629 Remediation and Other Waste Management Services
 6215 Medical and Diagnostic Laboratories
 8133 Social Advocacy Organizations

IMPACT ON JOBS: We used the REMI E3+ model for Washington state to estimate the impact of the proposed rule amendments on jobs in the state, accounting for dynamic adjustments throughout the economy.

The proposed rule amendments would result in transfers of money within and between industries, as compared to the baseline. The modeled impacts on employment are the result of multiple small increases and decreases in employment, prices, and other economic variables across all industries in the state.

Employment modeling results of the REMI E3+ show a minor impact on jobs in the affected industries. All industries in the state would experience an estimated total initial job loss of 14 full-time employees (FTEs), increasing to a job loss of 45 FTEs by 2043. The industry with the highest jobs impact is construction, with an estimated initial job loss of two FTEs. Construction is an industry highly sensitive to changes in economic activity in the state.

Direct cost estimates (inputs into the model) are based on the low end of the total cost ranges estimated in Chapter 3. We made this assumption based on the acknowledgment that most labs are already performing many, if not all, of the proposed requirements for quality control and data quality.

In terms of NAICS codes and sectors defined in the REMI model, laboratories are captured in the "Management, Scientific, and Technical Consulting Services" sector. The REMI model indicates that, in the aggregate, this sector would experience an equivalent loss of less than one FTE total across all laboratories, increasing to a loss of two to three FTEs in 2027, and this loss would likely be permanent. To test the sensitivity of this result to our low-cost assumption, we also ran the model using high-cost inputs that reflect much broader or universal incurrence of the costs of additional quality control and data quality activities than is likely based on current lab practices and interpretations of the baseline rule. This resulted in the laboratory sector losing between two and 15 FTEs annually through 2043.

We also heard from small laboratories that they were concerned about their ability to do additional work, pay more fees, or incur additional costs, in light of difficulties meeting their own workload and staffing needs. We note that our cost estimation (see Chapter 3) is based in part on a range of representative labs, and on conservative assumptions that likely overestimate costs. This means our estimates are likely to overestimate costs to many small laboratories, especially for small, independent laboratories. Some small laboratories are currently accredited for as few as one analyte, as necessary for their internal work, and this would naturally reduce their costs and any needs to hire additional staff or pay more in wages.

These attributes of small labs, likely incurring lower costs but having more difficulty adjusting to them, work against one another to determine ultimate impacts of the proposed rule amendments. We note, however, that the employment impacts estimated in this section are therefore more likely to happen at small laboratories that have the most difficulty adjusting their overall business model and staffing.

A copy of the statement may be obtained by contacting Ryan Zboralski, P.O. Box 488, Manchester, WA 98353-0488, phone 360-764-9364, email ryan.zboralski@ecy.wa.gov.

April 19, 2023
Heather R. Bartlett
Deputy Director

OTS-4306.5

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-040 Definitions. Definitions in this section apply throughout this chapter, unless context clearly indicates otherwise.

"Accreditation" - The formal recognition by the department that an environmental laboratory is capable of producing accurate and defensible analytical data. This recognition is signified by issuance of a written certificate accompanied by a scope of accreditation indicating the parameters for which the laboratory is accredited.

- The term "accredit" as used in this chapter is intended to have the same meaning as the term "certify" as used in RCW 43.21A.230.
- Any laboratory accredited under this chapter shall be deemed to have been certified under RCW 43.21A.230.
- The department does not, by accrediting any laboratory pursuant to these rules, vouch for or warrant the accuracy of any particular work done or report issued by that laboratory.

"Accreditation year" - The one-year period as stated on the certificate of accreditation.

"Accuracy" - The degree to which an analytical result corresponds to the true or accepted value for the sample being tested. Accuracy is affected by bias and precision.

"Analyte" - The constituent or property of a sample measured using an analytical method.

"Analytical data" - The recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiochemical, or other scientific determination.

"Analytical method" - A written procedure for acquiring analytical data.

"Audit" - An inspection and evaluation of laboratory facilities, equipment, records, and staff. This may be on-site or virtual.

"Calibration curve" - A series of standards of known concentrations used to determine the relationship between concentration and analytical response.

"Data traceability" or "traceability" - The ability to recreate the final result by means of records. This must be an unbroken trail of accountability for verifying or validating the chain of custody of

samples, the data, the documentation of a procedure, or the values of a standard.

"Department" - The state of Washington department of ecology when the term is not followed by another state designation.

"Drinking water certification manual" - The Environmental Protection Agency *Manual for the Certification of Laboratories Analyzing Drinking Water*, 5th Edition, January 2005.

"Ecology accrediting authority" - The supervisor of the lab accreditation unit of the environmental assessment program of the department of ecology.

"Environmental laboratory" or "laboratory" - A facility:

- Under the ownership and technical management of a single entity in a single geographical location or in a self-contained mobile unit;
- Where scientific determinations are performed on samples taken from the environment, including drinking water samples; and
- Where data is submitted to the department of ecology, department of health, or other entity requiring the use of an accredited laboratory under provisions of a regulation, permit, or contractual agreement.

"Instrument" or "instrumentation" - Equipment used to measure an analyte(s).

"Lab accreditation unit" - The lab accreditation unit of the department of ecology.

"Laboratory control sample" or "LCS" (also known as a "laboratory fortified blank" or "LFB") - An aliquot of analyte-free water or analyte-free solid (e.g., Ottawa sand, anhydrous sodium sulfate, or other purified solid) to which known amounts of the method analytes are added.

"Limit of quantitation" or "LOQ" - Lowest amount of analyte that can be measured with acceptable precision and accuracy as required by data quality objectives.

"Matrix" - The material to be analyzed, including, but not limited to, ground or surface water, wastewater, drinking water, air, solid waste, soil, tissue, nuclear waste, and hazardous waste. For the purposes of establishing a fee structure (WAC 173-50-190(4)), matrices are grouped as follows:

- Nonpotable water;
- Drinking water;
- Solid and chemical materials; and
- Air and emissions.

~~(**"On-site audit"** - An on-site inspection and evaluation of laboratory facilities, equipment, records and staff.)~~

"Matrix spike" or "MS" - Matrix spikes are aliquots of environmental samples to which known concentrations of certain target analytes have been added before sample preparation, cleanup, and determinative procedures have been implemented.

"Method detection limit" or "MDL" - The minimum concentration of an analyte that can be measured and reported with a 99 percent confidence that the analyte concentration is distinguishable from the method blank results as determined by the procedure set forth in Appendix B of 40 C.F.R. Part 136.

"Out-of-state laboratory" - A laboratory that is not located in the state of Washington.

"Parameter" - The combination of one or more analytes determined by a specific analytical method in a specific matrix. Examples of parameters include:

- The analyte alkalinity by method SM 2320 B in nonpotable water;

- The analyte ((zinc)) arsenic by method EPA ((200.7)) 200.8 in drinking water;
- ~~The ((set of analytes called volatile organic compounds (VOCs))~~ analyte benzene by method EPA 8260 in solid and chemical materials; and
- ~~The analyte ((Total Coli/Ecoli-count))~~ fecal coliform-count by method SM 9222 ((B/9221-F)) D in nonpotable water.

"Principal laboratory" - A laboratory designated by the Washington department of health to support the drinking water certification program.

"Procedural manual" - The most recent version of the Department of Ecology's Procedural Manual for the Environmental Laboratory Accreditation Program ((dated September 2010)).

"Proficiency testing (PT)" - Evaluation of the results from the analysis of samples in the accredited matrix, the true values of which are known to the supplier of the samples but unknown to the laboratory conducting the analyses. PT samples are provided by a source external to the environmental laboratory.

"Quality assurance (QA)" - Activities intended to assure that a quality control program is effective. A QA program is a totally integrated program for assuring reliability of measurement data.

"Quality assurance (QA) manual" - A written record intended to assure the reliability of measurement data. A QA manual documents policies, organization, objectives, and specific QC and QA activities. Volume and scope of QA manuals vary with complexity of the laboratory mission.

"Quality control (QC)" - ~~((The routine application of statistically based procedures to evaluate and control the accuracy of analytical results.))~~ The overall system of technical activities that measures the attributes and performance of a process, item, or service against defined standards to verify that they meet the stated requirements established by the customer; operational techniques and activities that are used to fulfill requirements for quality.

"Regulatory program" - A program administered by a federal, state, or other regulatory agency.

"Standard operating procedure" or "SOP" - A detailed written description of a procedure designed to systematize performance of the procedure.

"Third-party accreditation" - Recognition by the ecology accrediting authority of accreditation granted by another accrediting authority.

"WA ELAP" - Washington state environmental laboratory accreditation program.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-040, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-040, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-040, filed 9/22/93, effective 10/23/93; WSR 90-21-090 (Order 90-21), § 173-50-040, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-040, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-050 Responsibilities of the department. (1) The department maintains a procedural manual describing specifics of the accreditation process. As a minimum, the procedural manual describes the procedures for:

- Submitting an application and fee;
- Preparing a quality assurance manual;
- Performing proficiency testing;
- Conducting (~~on-site~~) audits;
- Accrediting out-of-state laboratories;
- Granting, denying, suspending, and revoking accreditation; and
- Notifying laboratories and authorized government officials of accreditation actions.

The department will make the procedural manual available to all interested persons.

(2) Department personnel assigned to assess the capability of drinking water laboratories participating in the WA ELAP must meet the experience, education, and training requirements established in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-050, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-050, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-050, filed 9/22/93, effective 10/23/93; WSR 90-21-090 (Order 90-21), § 173-50-050, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-050, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-060 Responsibilities of environmental laboratories.

(1) When applying for initial accreditation (see WAC 173-50-130 for maintaining an existing accreditation), managers of environmental laboratories must:

((+)) (a) Submit an environmental laboratory accreditation application (WAC 173-50-063) and required fees (WAC 173-50-190) to the department fiscal officer;

((+)) (b) Submit a copy of the laboratory's quality assurance manual (WAC 173-50-067);

((+)) (c) For laboratories seeking direct accreditation from the department, SOP's for all methods for which the laboratory is seeking accreditation must, at a minimum, be submitted;

(d) Submit an initial set of satisfactory PT sample results (WAC 173-50-070); and

((+)) (e) Undergo an (~~on-site~~) audit (WAC 173-50-080).

(2) For laboratories to be accredited for drinking water parameters, the laboratory must follow requirements designated in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-060, filed 8/9/10, effective

9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-060, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-060, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-060, filed 4/20/89 and 3/13/90, effective 4/13/90.]

NEW SECTION

WAC 173-50-061 Required quality control practices. Laboratories must comply with the following quality control practices:

- (1) Have a dedicated SOP for each method listed on their current Washington scope of accreditation.
- (2) For parameters where a multilevel calibration is necessary:
 - (a) A laboratory must not remove any midpoints from a calibration curve with the exception of consecutive points at either end of the curve.
 - (b) Each calibration point must have its value recalculated against the calibration curve. Unless specified in the method, each calibration point must have its percent error or relative standard error meet the calibration verification acceptance limits from the method; with the exception points at or below the LOQ where the limit is 50 - 150 percent error, or percent relative standard error.
- (3) For parameters that require a limit of quantitation and the method does not specify any requirements, laboratories must analyze a standard at their limit of quantitation at least annually. This standard must meet 50 percent of the true value. This applies to the following instrumentation technologies:
 - (a) Atomic absorption;
 - (b) Flow-injection analysis;
 - (c) Gas and liquid chromatography;
 - (d) Inductively coupled plasma;
 - (e) Ion chromatography;
 - (f) Spectrometry;
 - (g) Total organic carbon analysis; and
 - (h) Any other technology where method detection limits are applicable.
- (4) Matrix spikes are required as specified by the method. Observed matrix issues must be addressed for regulated parameters under the federal Safe Drinking Water Act and Clean Water Act.
- (5) Laboratory control samples must include all analytes of interest in the respective analysis. Matrix spikes should include all analytes of interest in the respective analysis.
- (6) When quality control samples for chemistry parameters such as a laboratory control sample are above their acceptance criteria for a parameter(s), the data for that parameter(s) can only be reported if the laboratory can demonstrate:
 - (a) No source of low bias of that parameter(s) is also present in the sample(s) and/or other related quality control samples;
 - (b) Instrument calibration have met method acceptance criteria; and
 - (c) The reported samples do not have a detection for the high biased parameter(s).
- (7) Documented resolution of spectral interferences is required for ICP-OES.

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AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-063 Application. (1) Through ~~((the))~~ a department environmental laboratory accreditation application, laboratory managers:

((+)) (a) Request accreditation for specific parameters;
 ((+)) (b) Calculate fees due to the department; and
 ((+)) (c) Provide evidence that sufficient and capable personnel and equipment are available to successfully perform analytical methods as specified in the application.

(2) Through review of the application submitted by the applicant laboratory, the lab accreditation unit determines if:

((+)) (a) Requested parameters are eligible for accreditation;
 ((+)) (b) The fee calculated by the applicant laboratory is correct; and
 ((+)) (c) Personnel and equipment are adequate to support successful performance of requested parameters.

(3) Following the review, the lab accreditation unit advises the applicant laboratory of any required changes.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-063, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-063, filed 10/1/02, effective 11/1/02.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-067 Quality assurance manual. (1) The lab accreditation unit reviews and approves the laboratory's QA manual prior to the initial ~~((on-site))~~ audit. The QA manual submitted concurrently with ~~((the))~~ a department environmental laboratory accreditation application must be in detail and scope commensurate with the size and mission of the laboratory. Guidelines for contents of the QA manual are in the procedural manual.

(2) The QA manual must address QA and QC requirements of applicable regulatory programs. For drinking water laboratories, such requirements ~~((are))~~ can be found in the drinking water certification manual and/or approved method.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-067, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-067, filed 10/1/02, effective 11/1/02.]

NEW SECTION

WAC 173-50-069 Data and record traceability. (1) In order to demonstrate data traceability, laboratories must:

- (a) Be able to recreate final sample results by means of records in entirety;
- (b) Document proper storage of any chemical, reagent, and/or media used by an analytical method;
- (c) Document proper storage of samples as required by the specific analytical method and/or regulation;
- (d) Document that all temperature-based equipment such as a refrigerator, oven, or incubator is both within control and checked manually as required by the relevant analytical method;
- (e) Keep logbooks for any and all instruments, including documentation of installation, setup, maintenance, and removal from service; and
- (f) Document proper preparation and QC of chemicals, reagents, and media used in support of the analyses.

(2) When records are handwritten, they must be in indelible ink and comply with the relevant method requirements. Incubator temperatures must be handwritten and include the date and time(s) of reading, temperature(s), and technician's initials.

(3) When records are kept electronically, they must be recorded at the time of reading, using a fully traceable and secure format. Use of continuous data-loggers is not an acceptable substitute for method and/or regulatory required incubator temperature checks.

[]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-070 Proficiency testing (PT). (1) The lab accreditation unit advises applying laboratories of specific requirements for participation in proficiency testing (PT) studies for applicable parameters. Proficiency tests conducted under the provisions of other recognized programs may be used to satisfy these requirements. The lab accreditation unit determines the sufficiency of such proficiency tests.

(2) Accredited laboratories must analyze a minimum of ~~((one))~~ two PT samples per applicable ~~((microbiology parameter per year and two PT samples for applicable chemistry))~~ parameters per year. ~~((For chemistry parameters,))~~ After an accredited laboratory submits two satisfactory PT sample results and no unsatisfactory results in an accreditation year, the laboratory is required to submit only one satisfactory PT sample result in subsequent accreditation years. This applies as long as there are no intervening unsatisfactory PT sample results.

(3) The lab accreditation unit may require the laboratory to submit raw data along with the report of analysis of PT samples.

(4) The lab accreditation unit may waive proficiency tests for certain parameters if PT samples are not readily available or for other valid reasons.

(5) Applying laboratories are responsible for obtaining PT samples from vendors approved by the lab accreditation unit. No fee shall

be charged to the department for the purchase or analysis of PT samples.

(6) PTs must undergo the identical preparation and analytical processes that are used for samples.

(7) When two or more approved PTs exist for a parameter, the laboratory must analyze and pass a PT to gain or maintain accreditation, unless an exception is approved by the department.

(8) Presence-absence microbiology parameters must pass all 10 replicates in their PTs to be considered acceptable.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-070, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-070, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-070, filed 9/22/93, effective 10/23/93; WSR 90-21-090 (Order 90-21), § 173-50-070, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-070, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-080 ((~~On-site~~)) Audits. The laboratory must undergo an ((~~on-site~~)) audit by the department, or their primary accreditation authority (in cases of third party recognition), to assess critical elements and areas of recommended practices. All directly accredited laboratories will be audited on a triennial basis. The laboratory must assist/accommodate department of ecology personnel during ((~~on-site~~)) audits as required. The department will determine if the audit will be on-site.

(1) **Critical elements for accreditation.** Elements of an environmental laboratory's operations which are critical to the consistent generation of accurate and defensible data are critical elements for accreditation. Critical elements are subject to intense scrutiny throughout the accreditation process. The ecology accrediting authority may deny, revoke, or suspend accreditation for deficiencies in critical elements. Functional areas including critical elements are:

(a) **Analytical methods.** The ((~~on-site~~)) audit seeks to determine if documentation of analytical methods:

((~~*~~)) (i) Are present at the laboratory;

((~~*~~)) (ii) Are approved for regulatory use, if applicable;

(iii) Readily available to analysts; and

((~~*~~)) (iv) Being implemented. If the laboratory is using a locally developed method, the ((~~on-site~~)) audit may include an evaluation of the adequacy of that method.

(b) **Equipment and supplies.** The ((~~on-site~~)) audit seeks to determine if sufficient equipment and supplies as required by analytical methods are:

((~~*~~)) (i) Available;

((~~*~~)) (ii) Being adequately maintained; and

((~~*~~)) (iii) In a condition to allow successful performance of applicable analytical procedures.

To gain and maintain accreditation, laboratories must demonstrate that equipment and supply requirements of applicable regulatory programs are being met.

(c) **QA and QC records.** The ((~~on-site~~)) audit includes a review of QA and QC records for programs/projects within which the laboratory is generating analytical data for submission to the data user.

(d) **Sample management.** The ((~~on-site~~)) audit includes a review of applicable procedures for receipt, preservation, transportation, and storage of samples. The laboratory is responsible only for those elements of sample management over which it has direct control. To gain and maintain accreditation, laboratories must demonstrate that sample management requirements of applicable regulatory programs are being met.

(e) **Data management.** The ((~~on-site~~)) audit includes a review of activities necessary to assure accurate management of laboratory data including:

((~~•~~)) (i) Raw data;

((~~•~~)) (ii) Calculations; and

((~~•~~)) (iii) Transcription, computer data entry, reports of analytical results.

To gain and maintain accreditation, laboratories must demonstrate that data management requirements of applicable regulatory programs are being met.

(2) **Recommended practices.** Recommended practices are those elements of laboratory operations which might affect efficiency, safety, and other administrative functions, but do not normally affect quality of analytical data. Normally these practices would not be the basis for denial or revocation of accreditation status. Functional areas within which recommended practices may be noted are:

(a) **Personnel.** The department seeks to determine if managerial, supervisory, and technical personnel have adequate training and experience to allow satisfactory completion of analytical procedures and compilation of reliable, accurate data. Minimum recommended education and experience criteria for laboratory personnel are specified in the procedural manual.

(b) **Facilities.** The department seeks to determine if laboratory facilities allow efficient generation of reliable, accurate data in a safe environment.

(c) **Safety.** The department may refer serious safety deficiencies to appropriate state or federal agencies.

(3) **Drinking water laboratory requirements.** For laboratories applying for accreditation of drinking water parameters, ((~~on-site~~)) audit requirements are those designated in the drinking water certification manual. If such a standard is more stringent than the corresponding standard in this chapter, the drinking water certification manual applies.

(4) **Documentation requests.** Laboratories must submit requested documentation to the department at least two weeks prior to the scheduled start date of an audit. At a minimum the documents submitted must include:

(a) Standard operating procedures for all methods being audited;

(b) Analytical data for each method being audited; and

(c) Additional documentation deemed necessary by the department to conduct the audit.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-080, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-080, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-080, filed 9/22/93, effective 10/23/93; WSR

90-21-090 (Order 90-21), § 173-50-080, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-080, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-100 Interim accreditation. (1) If the department is unable to complete the accreditation process through no fault of the laboratory, the ecology accrediting authority may grant interim accreditation. To be considered for interim accreditation, the laboratory must:

((+)) (a) Submit an application and applicable fees;
 ((+)) (b) Successfully complete applicable proficiency tests; and
 ((+)) (c) Submit a QA manual and applicable SOP's that meet((s)) the requirements of WAC 173-050-067.

(2) The lab accreditation unit may also require the laboratory to submit an analytical data package as evidence of analytical capability.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-100, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-100, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-100, filed 9/22/93, effective 10/23/93; WSR 90-21-090 (Order 90-21), § 173-50-100, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-100, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-110 Provisional accreditation. (1) The ecology accrediting authority may grant provisional accreditation to laboratories which can consistently produce valid analytical data but have deficiencies requiring corrective action. When the laboratory has corrected such deficiencies, it must provide evidence of correction to the lab accreditation unit, or request a follow-up ((on-site)) audit, as appropriate. If the lab accreditation unit determines the deficiencies have been corrected, the ecology accrediting authority awards full accreditation as in WAC 173-50-090.

(2) The ecology accrediting authority may renew a provisional accreditation for a subsequent accreditation period if laboratory management has demonstrated that all reasonable measures to correct deficiencies have been exhausted.

(3) For drinking water laboratories, specific conditions warranting provisional accreditation and specific actions required of the laboratory when provisional accreditation is granted are found in the drinking water certification manual.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-110, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order

01-12), § 173-50-110, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-110, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-110, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-130 Requirements for maintaining accreditation status. (1) Accreditation is granted for a one-year period (the accreditation year) and expires one year after the effective date of accreditation.

(2) Renewal requires the laboratory to submit:

((~~•~~)) (a) An application and appropriate fees;

((~~•~~)) (b) An update of the laboratory's QA manual if applicable;

((~~•~~)) (c) Evidence of accreditation by a third party when appropriate; ~~((and~~

~~•)) (d) Successful completion of proficiency testing requirements; and~~

(e) Any other documents specifically requested by the department needed to renew accreditation.

(3) For laboratories accredited for drinking water parameters, on-site audits are required at periods not to exceed three years from the previous on-site audit.

(4) For laboratories not accredited for drinking water parameters, the schedule of ~~((on-site))~~ audits will be determined by the ecology accrediting authority.

(5) For a laboratory planning to permanently change their location, the laboratory must notify the department at least 30 days prior to the need for accreditation at the new location. At the time of the laboratory move, the department places all accredited parameters into interim status pending successful completion of an audit. For instrumental analysis methods laboratories must take the following actions after a move:

(a) Conduct new MDL studies for all parameters at the new location;

(b) Pass a PT for all parameters at the new location;

(c) Update SOPs for all changed parameters, if there are any revisions to the SOPs due to the laboratory move; and

(d) Update third-party scope(s), if applicable.

(6) If the laboratory move includes a merger with another accredited laboratory, the laboratory must notify the department at least 60 days prior to the need for accreditation.

(7) Temporary and/or emergency laboratory moves will be handled on a case-by-case basis. The laboratory must contact the department before any sample analysis can resume.

(8) For a laboratory to be accredited for drinking water parameters, the laboratory must comply with requirements under WAC 246-390-055, 246-390-065, and 246-390-075 and 40 C.F.R. Part 141.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-130, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-130, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-130, filed 9/22/93, effective 10/23/93; WSR

90-21-090 (Order 90-21), § 173-50-130, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-130, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-140 Denying accreditation. (1) The ecology accrediting authority may deny accreditation if the applicant laboratory:

((+)) (a) Fails to comply with standards for critical elements of the ((on-site)) audit;

((+)) (b) Misrepresents itself to the department;

((+)) (c) Fails to disclose pertinent information in ((the)) their environmental laboratory accreditation application;

((+)) (d) Falsifies reports of analysis including proficiency testing results;

((+)) (e) Engages in unethical or fraudulent practices concerning generation of analytical data;

((+)) (f) Is deficient in its ability to provide accurate and defensible analytical data; or

((+)) (g) Fails to render applicable fees.

(2) A laboratory may be denied accreditation for a specific parameter for ((unsatisfactory)) unacceptable proficiency testing results.

(3) Laboratories denied accreditation may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, laboratories denied accreditation may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-140, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-140, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-140, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-140, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-150 Revoking or suspending accreditation. (1) Revocation of accreditation is the department's withdrawal of a previously granted accreditation. Revocation may involve the entire laboratory or one or more individual parameters.

(2) Suspension of accreditation is for a specified period during which the affected laboratory corrects deficiencies that led to the suspension. Suspension may involve the entire laboratory, or one or more individual parameters.

(3) The ecology accrediting authority may suspend or revoke accreditation if the accredited laboratory:

((+)) (a) Fails to comply with standards for critical elements of an ((on-site)) audit;

- ((*) (b) Violates a state rule and/or federal law relative to the analytical procedures for which it is accredited;
 - ((*) (c) Misrepresents itself to the department;
 - ((*) (d) Falsifies reports of analysis including proficiency testing results;
 - ((*) (e) Engages in unethical or fraudulent practices concerning generation of analytical data;
 - ((*) (f) Is deficient in its ability to provide accurate and defensible analytical data;
 - ((*) (g) Refuses to permit entry for enforcement purposes (WAC 173-50-210);
 - ((*) (h) Fails to render applicable fees;
 - ((*) (i) Fails to maintain third-party accreditation; or
 - ((*) (j) Reports two consecutive unsatisfactory PT sample results.
- (4) A laboratory having had its accreditation suspended or revoked may appeal under the provisions of WAC 173-50-200. If an appeal does not result in action favorable to the laboratory, and following correction of deficiencies, a laboratory having had its accreditation revoked may reapply for accreditation to include payment of appropriate fees as determined in WAC 173-50-190.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-150, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-150, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-150, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-150, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-170 Third-party accreditation. (1) The department may recognize accreditation (or certification, registration, licensure, approval) of a laboratory by a third party when the accreditation process is determined to be equivalent to that described in this chapter.

(2) Laboratories applying for recognition of a third party's accreditation submit:

- ((*) (a) An application and associated fee (WAC 173-50-190(7));
- ((*) (b) A copy of the third party's certificate;
- ((*) (c) A copy of the third party's scope of accreditation;
- ((*) (d) A copy of the third party's most recent (~~on-site~~) audit report;
- ((*) (e) A copy of the laboratory's corrective action report relative to the (~~on-site~~) audit, if applicable; and
- ((*) (f) Recent, satisfactory proficiency test results for the applicable parameters.

(3) In consideration of a request to recognize a third party's accreditation as the basis for accreditation by the ecology accrediting authority, the lab accreditation unit reviews the application and supporting documentation to assure compliance with minimum accreditation requirements as stated in this chapter. If the review is favora-

ble, a certificate and scope of accreditation are granted as in WAC 173-50-090.

(4) Laboratories granted third-party accreditation must notify the laboratory accreditation unit immediately of changes in the status of their third-party accreditation.

(5) Washington laboratories accredited or applying for accreditation in recognition of a third party's accreditation must notify the lab accreditation unit of (~~on-site~~) audits scheduled by the third party and allow a department observer to attend such (~~on-site~~) audits.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-170, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-170, filed 10/1/02, effective 11/1/02; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-170, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-190 Fee structure. (1) Fees in this chapter are in U.S. dollars and are established to cover costs of administering the WA ELAP. (~~Fees shall be assessed~~) The department shall assess fees for each parameter or method within each matrix, except as noted in subsection (3) of this section. Laboratories are charged using the fee structure of the fiscal year covering the effective date the department issues a determination on a laboratory's accreditation application, renewal of its accreditation, or a revision of a laboratory's scope of accreditation. The fee schedule per parameter or method for each category(, and the maximum fee per category where applicable,) are identified in ((Table 1.)):

(a) Table 1 - Fee schedule through June 30, 2024.

(b) Table 2 - Fee schedule from July 1, 2024, through June 30, 2025.

(c) Table 3 - Fee schedule from July 1, 2025, through June 30, 2026.

(2) Examples of parameters or methods for each category are published in the procedural manual. Accreditation may be requested for parameters in addition to those listed in the procedural manual.

(3) When a fee is assessed for a specific drinking water parameter or method, the laboratory may be accredited for the same parameter or method in nonpotable water without paying an additional fee.

~~((TABLE 1 - FEE SCHEDULE~~

CATEGORY	FEE PER PARAMETER	FEE PER METHOD	MAX FEE PER CATEGORY
General Chemistry	\$80	—	\$1,600
Trace Metals	—	\$400	—
Organics-I	—	\$200	—
Organics-II	—	\$500	—
Microbiology	\$200	—	—
Radiochemistry	\$250	—	—
Bioassay	\$300	—	\$3,000
Immunoassay	\$80	—	—
Physical	\$80	—	—))

Table 1 - Fee Schedule through June 30, 2024

<u>Category</u>	<u>Fee Per Parameter</u>	<u>Fee Per Method</u>	<u>Max Fee Per Category</u>
General Chemistry	\$80	=	\$1,600
Trace Metals	=	\$400	=
Organics I	=	\$200	=
Organics II	=	\$500	=
Microbiology	\$200	=	=
Radiochemistry	\$250	=	=
Bioassay	\$300	=	\$3,000
Immunoassay	\$80	=	=
Physical	\$80	=	=

Table 2 - Fee Schedule from July 1, 2024, through June 30, 2025

<u>Category</u>	<u>Fee Per Parameter</u>	<u>Per Parameter Add Fee to Existing Method</u>	<u>Fee Per Method</u>
General Chemistry	\$150	=	=
Trace Metals	=	\$30	\$745
Organics I	=	\$15	\$375
Organics II	=	\$35	\$930
Microbiology	\$375	=	=
Radiochemistry	\$555	=	=
Bioassay	=	\$15	\$375
Immunoassay	\$150	=	=
Physical	\$150	=	=

Table 3 - Fee Schedule from July 1, 2025, through June 30, 2026

<u>Category</u>	<u>Fee Per Parameter</u>	<u>Per Parameter Add Fee to Existing Method</u>	<u>Fee Per Method</u>
General Chemistry	\$220	=	=
Trace Metals	=	\$55	\$1,085
Organics I	=	\$30	\$545
Organics II	=	\$70	\$1,355
Microbiology	\$545	=	=
Radiochemistry	\$680	=	=
Bioassay	=	\$25	\$445
Immunoassay	\$220	=	=
Physical	\$220	=	=

(4) Starting July 1, 2026, Equation 1 below will be used to calculate the fees:

Equation 1

$$\text{Fee}_2 = \text{Fee}_1 \times (1 + \text{FGF})$$

Where:

Fee_1 = The current fiscal year fees for each category.

Fee_2 = The fee for each category for the fiscal year following the fiscal year in which Fee_1 was in effect, rounded up to the nearest whole \$5 increment. The updated fee table is then posted on the department's website.

FGF = An annual fiscal growth factor expressed as a percentage, as determined under chapter 43.135 RCW.

(a) Fiscal year begins July 1st and ends June 30th of the following calendar year. For example, fiscal year 2027 is July 1, 2026, through June 30, 2027.

(b) Ecology will provide annual notice of the next fiscal year's fees by March 31st.

(5) The minimum fee for accreditation, either direct or through recognition of a third-party accreditation, is ~~((three hundred dollars))~~ \$500.

~~((5))~~ (6) In addition to paying the fee indicated in Table 1, Table 2, Table 3, or as updated by Equation 1: Out-of-state laboratories must pay the department for the actual cost of travel associated with on-site audits. The department invoices the laboratory for such costs after completion of the on-site audit.

~~((6) The laboratory must pay applicable fees before:))~~ (7) For laboratories that have not been accredited for any parameter by the department in the previous 12 months, the laboratory must pay a processing fee of \$300 before:

~~((a))~~ (a) Its quality assurance manual ~~((is))~~ and applicable SOP's are reviewed by the department;

~~((b))~~ (b) The ~~((on-site))~~ audit is conducted if applicable; and

~~((c))~~ (c) Interim, provisional, or full accreditation is granted. The application fee is not refundable.

~~((7))~~ (8) Once accreditation is granted the laboratory will be invoiced annually by the department for the requested parameters.

(9) When a laboratory applies for renewal of their accreditation, an application fee is not required. The applicable accreditation fees per Table 1, Table 2, Table 3, or as updated by Equation 1 do not need to be paid prior to processing of the application.

(10) The fee for recognition of a third-party accreditation (WAC 173-50-170) is three-fourths (75(~~((%))~~ percent) of the fee indicated in Table 1, Table 2, Table 3, or as updated by Equation 1.

~~((8) If a laboratory withdraws from the accreditation process after the application has been processed, but before accreditation is granted, the fee is refundable, less an amount up to three hundred dollars as reimbursement for costs of processing the application.))~~

(11) If a laboratory requests to add or reinstate a parameter to their scope of accreditation outside of their initial application or renewal process, the laboratory will be invoiced a fee based on the type and number of requested parameters, per Table 1, Table 2, Table 3, or as updated by Equation 1.

(12) If a laboratory withdraws from the accreditation process after the ~~((on-site))~~ audit has been completed, the department may retain the entire fee including reimbursement of travel costs if applicable.

~~((9) Dollar amounts listed in Table 1 and subsections (4) and (8) of this section may be decreased at any time the department determines they are higher than needed to meet accreditation program requirements. The department notifies affected parties of any fee adjustment at least thirty days prior to the effective date of the adjusted fee.~~

~~((10))~~ (13) Accreditation fees are waived for laboratories operated by the Washington state departments of ecology and health. Accreditation fees are also waived for drinking water parameters certified by EPA Region 10 at designated principal laboratories.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-190, filed 8/9/10, effective

9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-190, filed 10/1/02, effective 11/1/02; WSR 93-20-011 (Order 92-53), § 173-50-190, filed 9/22/93, effective 10/23/93; WSR 90-21-090 (Order 90-21), § 173-50-190, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-190, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-210 ((Enforcement)) Compliance inspections and access. (1) For the purpose of conducting ((~~on-site~~)) audits or inspections to ensure compliance with this chapter, the department may, during regular business hours, enter business premises in which analytical data pertaining to accreditation under the provisions of this chapter are generated or stored.

(2) Refusal to permit entry for such purposes may result in denial or revocation of accreditation.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-210, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-210, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-210, filed 10/19/90, effective 11/19/90; WSR 89-10-001 and 90-07-017 (Order 89-1 and 89-1A), § 173-50-210, filed 4/20/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 10-17-032, filed 8/9/10, effective 9/9/10)

WAC 173-50-220 Assistance to laboratories. Laboratories scheduled to undergo an ((~~on-site~~)) audit may request a training session be conducted by department staff in conjunction with that audit. Accredited laboratories may also request on-site assistance at times other than the ((~~on-site~~)) audit. Whether requested as part of the ((~~on-site~~)) audit or otherwise, the department will provide such assistance to the extent allowed by staff resources available at the time.

[Statutory Authority: RCW 43.21A.230, 43.20.050 and 2009 c 564 § 301. WSR 10-17-032 (Order 09-09), § 173-50-220, filed 8/9/10, effective 9/9/10. Statutory Authority: RCW 43.21A.230. WSR 02-20-090 (Order 01-12), § 173-50-220, filed 10/1/02, effective 11/1/02; WSR 90-21-090 (Order 90-21), § 173-50-220, filed 10/19/90, effective 11/19/90.]

WSR 23-09-073
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 19, 2023, 10:46 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: The department of children, youth, and families (DCYF) is amending WAC 110-03-0020 Definitions, 110-03-0040 The right to a hearing, 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default, 110-15-0280 Right to request an administrative hearing, 110-50-0590 How does the foster parent appeal the department's decision on review?, and 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues?

Hearing Location(s): On May 23, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including May 23, 2023, will be considered.

Date of Intended Adoption: May 24, 2023.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 23, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is amending these WAC to align with SSB 5729 which allows for a good cause exception for missed deadlines when requesting an administrative hearing for public assistance cases.

Reasons Supporting Proposal: These amendments comply with SSB 5729 (2022).

Statutory Authority for Adoption: RCW 74.08.080 and 74.09.741.

Statute Being Implemented: RCW 74.08.080 and 74.09.741.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Laura Farris, Olympia, 360-485-7621; Implementation and Enforcement: DCYF, state-wide.

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. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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 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.

Scope of exemption for rule proposal:
Is fully exempt.

April 19, 2023
Brenda Villarreal
Rules Coordinator

OTS-4477.1

AMENDATORY SECTION (Amending WSR 22-22-004, filed 10/20/22, effective 11/20/22)

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

"Adjudicative proceeding" means a proceeding in which an opportunity for a hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of a DCYF action. Hearings and prehearing conferences are elements of adjudicative proceedings. An adjudicative proceeding may take place before the office of administrative hearings (OAH) and may also encompass review proceedings before a DCYF board of appeals (BOA) review judge.

"Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an adjudicative proceeding resulting in an initial order, or resulting in a final order if no appeal of the initial order is properly made or if no further agency appeal is available.

"Adverse action" or "DCYF action" or "department action" means licensing, the enforcement of a statute, the application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits.

"Board of appeals" or "BOA" means the DCYF board of appeals, the entity to which an initial order of an ALJ may be appealed and considered by a review judge.

"Business days" means all days except for Saturdays, Sundays, federal legal holidays, and state legal holidays listed in RCW 1.16.050(1).

"Business hours" means 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

"Calendar days" means all days including Saturdays, Sundays, federal legal holidays, and state legal holidays as listed in RCW 1.16.050(1).

"Case" means the entire adjudicative proceeding following the filing of a request for hearing with OAH.

"Continuance" means a change to a later date or time of a prehearing conference, hearing, or deadline for other action.

"DCYF" or "department" means the department of children, youth, and families.

"DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

"Documents" means papers, letters, writings, or other printed or written items.

"Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present, as provided in RCW 34.05.455. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

"File" means delivering documents to OAH or the BOA at the location designated in this chapter or in a notice or order received from OAH or the BOA. The date of filing is the date documents are actually received during office hours by OAH or the BOA.

(a) Filing may be by:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax transmission, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service; or

(v) Legal messenger service.

(b) A party cannot file documents by email, unless agreed in advance by OAH or BOA.

"Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order. However, in the case of administrative proceedings related to juvenile parole revocation or subsidy overpayments to child care providers, the ALJ's decision is the final administrative decision.

"Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules. An ALJ or review judge may use the provisions of superior court civil rule 60 as a guide to determine what may be considered good cause.

For purposes of public assistance cases, good cause has the same meaning as described in RCW 74.08.080. Good cause for not requesting a hearing before the deadline may include, but is not limited to: Military deployment, medical reasons, housing instability, language barriers, or domestic violence.

"Hearing" means a meeting held before OAH or a review judge that gives an aggrieved party an opportunity to be heard, for the purpose of deciding issues of fact or law, in a dispute resulting from an appealable action taken against the party by DCYF.

"Initial order" is a decision made by an ALJ that may be reviewed by a review judge at any party's request.

"Judicial review" means a superior court's review of a final order.

"Limited-English-proficient person" or "LEP" means a person with limited ability to read, write, or speak English well enough to understand and communicate effectively.

"OAH" means the office of administrative hearings. This is a separate agency and not part of DCYF.

"Party" means DCYF or a person or entity named in a department action, or to whom a department action is directed.

"Prehearing conference" means a meeting scheduled and conducted by an ALJ in preparation for a hearing.

"Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF offices and divisions.

"Public assistance" means public assistance as defined in RCW 74.04.004.

"Reconsideration" means reexamination of a final order on request of a party because the party believes a mistake was made.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Representative" means the person selected by a party to represent that party in an administrative hearing. A representative may be an attorney or a lay representative who is not an attorney.

"Review" means the act of reevaluating an initial order by examining the record and issuing the DCYF final order as provided by RCW 34.05.464.

"Review judge" or "BOA review judge" means an attorney designated by the DCYF board of appeals to act as the reviewing officer and who is authorized to review ALJ initial orders and to prepare and enter the final order.

"Rule" means a state agency regulation found in the Washington Administrative Code (WAC).

"Serve" or "service" means a procedure by which notice of legal action is given to a party.

(a) Unless otherwise stated in law or rule, a party may serve another party by one of the following methods:

(i) Personal service (hand delivery);

(ii) First class, registered, or certified mail;

(iii) Fax, if the party also mails a copy of the document the same day;

(iv) Commercial delivery service;

(v) Legal messenger service; or

(vi) By any other method authorized by chapter 10-08 WAC.

(b) Service for each method, respectively, is complete when:

(i) Personal service is made;

(ii) Mail is properly stamped, addressed, and deposited in the United States mail;

(iii) Fax produces proof of transmission;

(iv) A parcel is delivered to a commercial delivery service with charges prepaid; or

(v) A parcel is delivered to a legal messenger service with charges prepaid.

(c) A party cannot serve documents by email, unless agreed in advance by the receiving party.

(d) Notice and orders served by mail by OAH or BOA are served on the date of mailing.

"Stay" means an order temporarily halting the effective date of a DCYF action.

[Statutory Authority: RCW 13.40.220. WSR 22-22-004, § 110-03-0020, filed 10/20/22, effective 11/20/22. Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0020, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing to appeal an action by DCYF only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. Except for public assistance cases, there is no good cause exception to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause.

(2) Some DCYF programs may require a party to complete an agency review process before requesting a hearing. The notice of DCYF action that DCYF sends a party will include information about this requirement.

(3) A party has a specific, limited time to request a hearing. The deadline for the request is set by statute or department rule. In cases where the department sends a notice of DCYF action, information about how, where, and when to request a hearing will be provided in the notice.

(4) A challenge to an appealable DCYF action is heard in an administrative hearing by an ALJ employed by OAH. Not all DCYF actions may be challenged through the hearing process.

(5) If a party properly requests a hearing that is authorized under subsection (1) of this section, OAH will schedule a hearing and serve written notice of it on the parties.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0040, filed 12/19/19, effective 1/19/20.]

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0260 Failure to timely request a hearing, orders of dismissal, and orders of default. (1) A party's failure to request a hearing (~~(or)~~) to challenge a DCYF action within the time limit required by statute or rule results in the action becoming final and the loss of any right to a hearing. A final order resulting from a party's failure to timely request a hearing may not be vacated. Except for public assistance cases, there is no good cause exception (~~(for failing)~~) to the requirement to timely request a hearing. For public assistance cases, if an applicant or recipient does not file a request for a hearing within 90 calendar days after receiving notice of an aggrieving decision, the request may still be filed within one year of the aggrieving decision upon a showing of good cause.

(2) An order of dismissal served on the parties and their representatives by an ALJ to end an adjudicative proceeding may be based on withdrawal of the hearing request by the appealing party, the appealing party's failure to appear or refusal to meaningfully participate in the proceedings, a request for dismissal based on a written agreement between the parties, or a request for dismissal made by DCYF.

(a) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to meaningfully participate, the DCYF action becomes the final agency action.

(b) If the hearing is dismissed pursuant to a written agreement between the parties, the parties must comply with the agreement.

(3) (a) If an appealing party fails to attend or refuses to meaningfully participate in a scheduled prehearing conference or hearing, an order of default may be entered.

(b) The order of default will include notice that the party against whom the default order was entered may file a written motion requesting that the order be vacated and the hearing reinstated.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a motion to vacate the default order within (~~twenty-one~~) 21 calendar days of the date the order was served on the parties as provided under WAC 110-03-0270.

(d) After an order of default becomes a final order, the DCYF action will remain in effect and will be the final agency action.

[Statutory Authority: RCW 34.05.220, 43.216.020, and 43.216.065. WSR 20-02-031, § 110-03-0260, filed 12/19/19, effective 1/19/20.]

OTS-4478.2

AMENDATORY SECTION (Amending WSR 22-01-076, filed 12/10/21, effective 1/10/22)

WAC 110-15-0280 Right to request an administrative hearing. (1)

Consumers: Consumers who disagree with DCYF's decisions affecting their WCCC benefits have administrative hearing rights under chapter 110-03 WAC.

(a) Consumers' requests for hearing:

(i) May be made by contacting DCYF in-person, by telephone, or by serving DCYF with written requests that are also filed with the office of administrative hearings (OAH) as described in WAC 110-03-0060 and 110-03-0080.

(ii) Must include the information and documents described in WAC 110-03-0050(2), if requests are made in writing.

(iii) Must be made within 90 calendar days of the date the consumers received the decisions being appealed, unless good cause for a late request can be established under chapter 110-03 WAC.

(b) After completing the administrative hearings, OAH issues initial orders pursuant to WAC 110-03-0460 and 110-03-0480. Consumers who disagree with initial orders may request reviews as provided in WAC 110-03-0510 through 110-03-0550.

(c) When consumers request reviews of the initial orders, review judges issue final orders after considering the requests for review, initial orders, and hearing records. Consumers who disagree with final orders may request reconsiderations as provided in WAC 110-03-0570 through 110-03-0580 or seek judicial reviews as described in WAC 110-03-0590.

(2) **Providers:** Child care providers who disagree with WCCC overpayment decisions may request administrative hearings pursuant to RCW 43.20B.675.

(a) To request administrative hearings, child care providers must:

(i) Make their hearing requests in writing and include the information and documents described in RCW 43.20B.675(3) including, but not limited to, copies of the overpayment notices and statements explaining why they believe the overpayment notices are incorrect; and

(ii) Serve the hearing requests on the Department of Social and Health Services, Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501, using certified mail return receipt requested or other manner that provides proof of receipt within 28 calendar days of the date they received the overpayment notices being appealed.

(b) After completing the administrative hearings, OAH will issue final orders. Child care providers who disagree with final orders may request reconsideration. Providers may also seek judicial review of final orders.

[Statutory Authority: RCW 34.05.229 and 43.216.065. WSR 22-01-076, § 110-15-0280, filed 12/10/21, effective 1/10/22. WSR 18-14-078, recodified as § 110-15-0280, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR 17-23-033, § 170-290-0280, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0280, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0280, filed 10/28/09, effective 12/1/09.]

OTS-4517.1

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0590 How does the foster parent appeal the department's decision on review? (1) If the department upholds the rate assessment on review, the foster parent has the right to further challenge the assessment by timely requesting an administrative hearing.

(2) The request must be in writing and sent to the office of administrative hearings (OAH) (~~(. WAC 388-02-0025 lists the current addresses for OAH)~~), per WAC 110-03-0050.

(3) The request must be received by OAH within (~~(twenty)~~) 90 calendar days from the date of the letter notifying the foster parent of the department's decision on review, unless good cause for a late request can be established under chapter 110-03 WAC.

(4) Foster care providers and recipients of foster care funds do not have a right to request an administrative hearing to challenge or dispute the established rates of the foster care program or to challenge the foster care rate assessment standardized form or program.

[WSR 18-14-078, recodified as § 110-50-0590, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090. WSR 09-16-045, § 388-25-0077, filed 7/28/09, effective 8/28/09.]

OTS-4479.2

AMENDATORY SECTION (Amending WSR 20-04-019, filed 1/27/20, effective 2/27/20)

WAC 110-80-0400 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues? (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

- (a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;
- (b) Failure to respond with reasonable promptness to a written application or request for services;
- (c) Denial of a written request to modify the level of payment or service in the agreement;
- (d) Delay of more than (~~thirty~~) 30 calendar days when responding to a written request for modification of the agreement;
- (e) Denial of a request for nonrecurring adoption expenses;
- (f) Suspension of adoption support benefits; or
- (g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within (~~ninety~~) 90 calendar days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request, unless good cause for a late request can be established under chapter 110-03 WAC.

(3) The office of administrative hearings must apply the rules in this chapter as they pertain to the issues being contested.

[Statutory Authority: 2017 c 6. WSR 20-04-019, § 110-80-0400, filed 1/27/20, effective 2/27/20. WSR 18-14-078, recodified as § 110-80-0400, filed 6/29/18, effective 7/1/18. Statutory Authority: 42 U.S.C. § 671-675, RCW 26.33.340, 74.13A.020, 74.13A.030, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020, 45 C.F.R. § 1356.40 and RCW 74.13A.050, 74.13A.055. WSR 01-08-045, § 388-27-0365, filed 3/30/01, effective 4/30/01.]

WSR 23-09-074
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 19, 2023, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-012.

Title of Rule and Other Identifying Information: Working connections and seasonal child care subsidy programs; WAC 110-15-0075 Determining income eligibility and copayment amounts.

Hearing Location(s): On May 23, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 23, 2023, will be considered.

Date of Intended Adoption: May 24, 2023.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 23, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adjust copayment amounts for families above 50 percent and at or below 60 percent of the state median income from \$115 to \$165.

Reasons Supporting Proposal: The adjustment complies with chapter 199, Laws of 2021's directive that DCYF adjust copayment amounts.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.1368.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, Olympia, 360-688-0911; Implementation and Enforcement: DCYF, state-wide.

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. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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.

April 19, 2023
Brenda Villarreal
Rules Coordinator

OTS-4480.1

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

WAC 110-15-0075 Determining income eligibility and copayment amounts. (1) DCYF takes the following steps to determine consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract:

(a) Determine their family size as described in WAC 110-15-0015; and

(b) Determine their countable income as described in WAC 110-15-0065.

(2) DCYF calculates consumers' copayments as follows:

If the household's income is:	Then the household's maximum monthly copayment is:
At or below 20 percent of the SMI	Waived
Above 20 percent and at or below 36 percent of the SMI	\$65
Above 36 percent and at or below 50 percent of the SMI	\$90
Above 50 percent and at or below 60 percent of the SMI	(\$115) <u>\$165</u>
At reapplication, above 60 percent and at or below 65 percent of the SMI	\$215

(3) DCYF does not prorate copayments when consumers use care for only part of a month.

(4) For parents age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate, copayments are not required.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0075, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.215.060, 43.215.070 and chapter 43.215 RCW. WSR 21-01-180, § 110-15-0075, filed 12/21/20, effective 1/21/21. WSR 18-14-078, recodified as § 110-15-0075, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0075, filed 4/15/16, effective 5/16/16. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0075, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapter 43.215 RCW, RCW 43.215.060, 43.215.070, 2011 1st sp.s. c 42, 2011 1st sp.s. c 50, and 2006 c 265 § 501. WSR 11-18-001, § 170-290-0075, filed 8/24/11, effective 9/24/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0075, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0075, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0075, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR

02-14-067, § 388-290-0075, filed 6/27/02, effective 8/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0075, filed 12/19/01, effective 1/19/02.]

WSR 23-09-075
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 19, 2023, 11:00 a.m.]

Original Notice.

Preproposal Statement of Inquiry was filed as WSR 23-04-083.

Expedited [Emergency] Rule Making—Proposed notice was filed as WSR 23-03-050.

Title of Rule and Other Identifying Information: WAC 110-145-1850
What requirements are there for the storage of medications?

Hearing Location(s): On May 23, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 23, 2023, will be considered.

Date of Intended Adoption: May 24, 2023.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 23, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by May 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment enables DCYF to take enforcement action in the event a licensee doesn't ensure lifesaving medication is available in emergencies. This rule is intended to save lives. In July 2022, an identical rule was updated in the licensing requirements for child foster homes (WAC 110-148-1565).

Reasons Supporting Proposal: Due to the rising number of cases of opioid overdoses in our state, including affected foster care children and youth, life-saving medication such as naloxone (Narcan) must be available as an effective way to swiftly reverse the effects of an overdose in group care facilities. In addition, requiring all other life-saving medication (e.g., rescue inhalers, EpiPens, insulin) to be accessible during emergencies will only increase the likelihood of saving lives in group care facilities during medical emergencies.

Statutory Authority for Adoption: Chapters 13.34 and 74.13 RCW; RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030.

Statute Being Implemented: Chapters 13.34 and 74.13 RCW; RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

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. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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).

Scope of exemption for rule proposal:
Is fully exempt.

April 19, 2023
Brenda Villarreal
Rules Coordinator

OTS-4295.1

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-145-1850 What requirements are there for the storage of medications? (1) Prescription and over-the-counter medications must be kept in a locked container in a manner that minimizes the risks for medication errors.

(2) Human medication and animal medication must be kept separate from each other and in locked containers.

(3) Life-saving medications must be accessible in an emergency.

[WSR 18-14-078, recodified as § 110-145-1850, filed 6/29/18, effective 7/1/18. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1850, filed 12/11/14, effective 1/11/15.]

WSR 23-09-076

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed April 19, 2023, 11:02 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: Washington turfgrass seed commission, chapter 16-545 WAC. Specifically, WAC 16-545-015 Turfgrass seed districts and 16-545-020 Turfgrass seed board.

Hearing Location(s): On May 25, 2023, at 10:00 a.m., at Moses Lake Civic Center, Council Chambers, 401 South Balsam Street, Moses Lake, WA 98837.

Date of Intended Adoption: July 21, 2023.

Submit Written Comments to: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, email mfinkenbinder@agr.wa.gov, fax 360-902-2092, by May 25, 2023.

Assistance for Persons with Disabilities: Contact Washington state department of agriculture (WSDA) receptionist, phone 360-902-1976, fax 360-902-2092, TTY 800-833-6388, by May 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to combine districts within the turfgrass seed commission marketing order due to the decreasing numbers of turfgrass seed growers and handlers in the state.

Reasons Supporting Proposal: These amendments will implement the petition received from the turfgrass seed commission in accordance with RCW 15.65.050. The commission is proposing to combine districts 1 and 2, and 3 and 4, reducing the total number of districts and allowing for a larger representation to identify qualified individuals for commission positions. This is due in part to the reduction in turfgrass seed growers and handlers and the continued challenges to find representation within a specific district.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules will not be adopted unless they are approved by referendum of affected producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington turfgrass seed commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, 360-902-1887; Implementation and Enforcement: Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460.

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. WSDA and the Washington turfgrass seed commission are not named agencies in RCW 34.05.328 (5)(a)(i).

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

Is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

April 19, 2023
Derek I. Sandison
Director

OTS-4465.1

AMENDATORY SECTION (Amending WSR 16-19-046, filed 9/15/16, effective 10/16/16)

WAC 16-545-015 Turfgrass seed districts. (1) District 1 consists of Asotin, Chelan, Columbia, Douglas, Ferry, Garfield, Okanogan, Pend Oreille, Spokane, ((and)) Stevens, Walla Walla, and Whitman counties.

(2) District 2 consists (~~of Asotin, Columbia, Garfield, Walla Walla, and Whitman counties.~~

~~(3) District 3 consists~~) of Adams, Benton, Franklin, Grant, ((and)) Kittitas, Klickitat, Lincoln, and Yakima counties.

~~((4) District 4 consists of Benton, Kittitas, Klickitat, and Yakima counties.)~~)

[Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-015, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-015, filed 1/6/99, effective 2/6/99.]

AMENDATORY SECTION (Amending WSR 18-13-015, filed 6/7/18, effective 7/8/18)

WAC 16-545-020 Turfgrass seed board. (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the board as the designee of the director.

(2) **Board membership.**

(a) The board consists of seven voting members numbered positions one through seven.

(b) Except as otherwise provided by this chapter, each district has (~~one board member in positions one through four representing each of the numbered districts~~) the following positions represented:

District 1 - Positions one and two.

District 2 - Positions three and four.

(c) Position five represents the district with the highest reported value of production of turfgrass seed the previous three years.

(d) Position six is a handler appointed by the appointed or elected producer members of the board.

(e) Position seven represents and is appointed by the director.

(3) **Board membership qualifications.**

(a) Positions one through five.

(i) Except as otherwise provided by this chapter, board members in positions one through five must be practical producers of turfgrass seed in the district in and for which they are nominated, appointed, or elected and each shall be a citizen and resident of the state, over the age of eighteen years. Each producer board member must be and have been actually engaged in producing turfgrass seed within the state of Washington for a period of three years and has during that time derived a substantial portion of his or her income therefrom and who is not engaged in business as a handler or other dealer.

(ii) If any district has fewer than three practical producers of turfgrass seed or if no nominations are made for a district, that district's position is deemed "at large" for that term of office and may be filled by a producer of turfgrass seed in another district who meets all membership qualifications. This provision does not apply to position five.

(b) The board member in position six must be a practical handler of turfgrass seed and must be a citizen and resident of the state, over the age of eighteen years. The handler board member must be and have been, either individually or as an officer or an employee of a corporation, firm, partnership, association or cooperative actually engaged in handling turfgrass seed within the state of Washington for a period of five years and has during that period derived a substantial portion of his or her income therefrom.

(c) The board member in position seven must be neither a producer nor a handler.

(d) The qualifications of members of the board must continue during their term of office.

(4) **Term of office.** The term of office for members of the board is three years. One-third of the membership as nearly as possible must be appointed or elected each year.

(5) **Nomination of elected or director-appointed board members.**

(a) Each year the director shall call a nomination meeting for elected and/or director-appointed producer board members in those districts whose board members term is about to expire. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(b) Notice of a nomination meeting must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers within the affected district according to the list maintained by the board pursuant to RCW 15.65.295.

(c) Nonreceipt of notice by any interested person will not invalidate the proceedings at the nomination meeting.

(d) Any qualified affected producer may be nominated orally for membership on the board at the nomination meetings. Nominations may also be made within five days after the meeting by written petition filed with the director, signed by at least five affected producers.

(e) When only one nominee is nominated by the affected producers for an elected and/or director-appointed position, RCW 15.65.250 shall apply.

(f) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the open board position(s) by mail to all affected producers. Nominating petitions for producers must be signed by at least five affected producers of the district from which the candidate will be appointed

or elected. The final date for filing nominations must be at least twenty days after the notice was mailed.

(6) **Election or advisory vote of board members.**

(a) An election or advisory vote shall be conducted by secret ballot under the supervision of the director within the month of January. Each affected producer shall be entitled to one vote.

(b) Elected members of the board must be elected by a majority of the votes cast by the affected producers within the affected district. If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) An advisory vote shall be conducted for producer board members appointed by the director under the provision of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, and advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected district at least ten days in advance of the date of the election or advisory vote. At least ten days before every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list of the affected producers maintained by the board pursuant to RCW 15.65.295. Any other affected producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

(e) Nonreceipt of a ballot by an affected producer will not invalidate the election or advisory vote of any board member.

(7) **Vacancies.**

(a) In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No member of the board will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this market-order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chairman and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check; draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish a "turfgrass seed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited at least once every five years subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The board must pay the premium for the bond or bonds from assessments collected. The bond may not be necessary if any blanket bond covering officials or employees of the state of Washington covers any board member or employee.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. The board, at least sixty days prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget.

(j) To establish by resolution a headquarters, which shall continue unless, changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature for the operation of the board, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States to obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

- (o) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.
- (p) To sue or be sued.
- (q) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.
- (r) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local.
- (s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.
- (t) To enter into contracts or agreements for research in the production, irrigation, and transportation of turfgrass seed.
- (u) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of attorney general.
- (v) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.
- (w) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, and transportation of turfgrass seed including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission.
- (x) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.
- (y) To maintain a list of the names and addresses of persons who handle turfgrass seed within the affected area and data on the amount and value of the turfgrass seed handled for a minimum three-year period by each person pursuant to RCW 15.65.280.
- (z) To maintain a list of names and addresses of all affected persons who produce turfgrass seed and the amount, by unit, of turfgrass seed produced during the past three years pursuant to RCW 15.65.295.
- (aa) To maintain a list of all persons who handle turfgrass seed and the amount of turfgrass seed handled by each person during the past three years pursuant to RCW 15.65.295.
- (bb) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.
- (11) **Procedures for board.**
- (a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.
- (b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be filed in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the annual meeting must be given at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with twenty-four hours written notice to the members. A board member may waive in writing his or her notice of any special meeting. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

[Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 18-13-015, § 16-545-020, filed 6/7/18, effective 7/8/18. Statutory Authority: RCW 15.65.047, 15.65.050, and chapter 34.05 RCW. WSR 16-19-046, § 16-545-020, filed 9/15/16, effective 10/16/16. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 04-22-073, § 16-545-020, filed 11/1/04, effective 12/2/04. Statutory Authority: RCW 15.65.050. WSR 99-02-064, § 16-545-020, filed 1/6/99, effective 2/6/99.]

WSR 23-09-077

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 19, 2023, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-105.

Title of Rule and Other Identifying Information: Public health emergencies (PHE).

Hearing Location(s): On May 24, 2023, at 9:00 a.m. PST, Zoom <https://esd-wa-gov.zoom.us/j/86814370696?pwd=Y3RaNFhRL2ZyRjFQWGVFVkpqYW5Hdz09>, Meeting ID 868 1437 0696, Pass-code 956326; call in one-tap mobile +12532050468,,86814370696# US, +12532158782,,86814370696# US (Tacoma); dial by your location +1 253 205 0468 US, +1 253 215 8782 US (Tacoma), +1 346 248 7799 US (Houston), +1 305 224 1968 US.

Date of Intended Adoption: May 25, 2023.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by May 24, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by May 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal clarifies whether a claim for unemployment benefits is covered by a PHE declaration when the PHE is enacted or lifted during a particular week.

Reasons Supporting Proposal: Currently, multiple factors for determining a claimant's eligibility for unemployment benefits are impacted by a declaration of a PHE. On February 10, 2023, President Biden announced that federal Proclamation 9994, which declared the COVID-19 national PHE, would expire on May 11, 2023. On March 29, 2023, the United States Senate passed House Joint Resolution 7 to end the COVID-19 national PHE. The national PHE will end when President Biden signs the resolution. Benefit weeks run from Sunday to Saturday. The PHE may end in the middle of a benefit week, depending on with [when] the resolution is signed. This rule making will clarify how a declaration of a PHE that begins or ends during the middle of a benefit week impacts a claimant's eligibility for benefits and an employer's ability to get relief of benefit charges in certain situations.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.20.010 defines benefit eligibility conditions for unemployment benefits.

Statute Being Implemented: RCW 50.20.010.

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: Public.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, Washington, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, Washington, 360-463-1079.

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 Josh Dye,

P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 771, email rules@esd.wa.gov, https://esd.wa.gov/newsroom/rulemaking/leave-of-absence.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

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. [No further information supplied by agency.]

April 19, 2023

Dan Zeitlin

Employment System Policy Director

OTS-4427.1

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

- (a) You left work primarily because of such illness, disability, or death; and
- (b) The illness, disability, or death made it necessary for you to leave work; and
- (c) You first exhausted all reasonable alternatives prior to leaving work, including:
 - (i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and
 - (ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsection ~~((s (1) (a) – (c) above))~~ (1) (a) through (c) of this section, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1) (c) of this section if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

- (a) "Disability" means a sensory, mental, or physical condition that:
 - (i) Is medically recognizable or diagnosable;
 - (ii) Exists as a record or history; and
 - (iii) Substantially limits the proper performance of your job;
- (b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children,

foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work;

(d) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency that is active on the date of the request to enter isolation or quarantine, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-150-055, filed 6/2/22, effective 7/3/22. Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

NEW SECTION

WAC 192-150-165 Leaving work at a health care facility during a public health emergency. With respect to claims that occur on or after July 4, 2021, a claimant has good cause and is not disqualified from benefits under RCW 50.20.050 (2) (a) if the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and left work on a day of an active public health emergency for a period of quarantine consistent with the recommended guidance from the United States Centers for Disease Control and Prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the public health emergency.

[]

NEW SECTION

WAC 192-150-235 Health care workers and periods of quarantine.
 (1) It is not misconduct for a health care worker to leave work for the period of quarantine consistent with the recommended guidance from the United States Centers for Disease Control and Prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(2) For purposes of this section, the public health emergency must be active on the date the health care worker leaves work.

(3) For purposes of this section, "health care worker" means an individual who worked at a health care facility as defined in RCW 9A.50.010 and was directly involved in the delivery of health services.

[]

OTS-4428.1

AMENDATORY SECTION (Amending WSR 22-21-093, filed 10/17/22, effective 11/17/22)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to accept suitable full-time, part-time, and temporary work during the usual hours and days of the week customary for your occupation.

(i) You are not required to accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least 40 hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are considered available for work if you are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

(4) If you are physically located outside of the United States, Puerto Rico, or the U.S. Virgin Islands, the department will consider you available for work if you meet the requirements of subsections (1) and (2) of this section, and:

(a) You are legally authorized to work in the country in which you are physically located;

(b) You are immediately available for work in the United States; or

(c) You are a spouse or domestic partner of a member of the United States Armed Forces and you are legally authorized to work within the foreign military base where your spouse or domestic partner is stationed.

(5) (a) During the weeks of a declared public health emergency, an unemployed health care worker described in RCW 50.20.050(3) and 50.29.021 (1)(c)(iii) is considered available for work while isolated or under quarantine as directed by a medical professional, local health official, or the Secretary of Health, if the individual is available for work that:

- (i) Will commence after the isolation or quarantine period ends;
- or
- (ii) Can be performed from the individual's home.

(b) For the purposes of this section, a health care worker is defined as an individual who was directly involved in the delivery of health services at a health care facility as defined in RCW 9A.50.010.

(c) For the purposes of this subsection, a week of a declared public health emergency is a week during which a public health emergency has been declared for at least one day.

(6) During the weeks of a public health emergency, an unemployed individual may also meet the requirements of subsection (1)(c) of this section if:

(a) You are able to perform, available to perform, and actively seeking suitable work which can be performed for an employer from your home; and

(b) You or another individual residing with you is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(i) Was in an age category that is defined as high risk for the disease that is the subject of the public health emergency by:

(A) The federal Centers for Disease Control and Prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides; or

(ii) Have an underlying health condition, verified pursuant to WAC 192-170-015, that is identified as a risk factor for the disease that is the subject of the public health emergency by:

(A) The federal Centers for Disease Control and Prevention;

(B) The department of health; or

(C) The equivalent agency in the state where the individual resides.

(c) For the purposes of this subsection, a week of a declared public health emergency is a week during which a public health emergency has been declared for at least one day.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010(5), 50.20.050(3), 50.29.021 (1)(c)(iii), and 9A.50.010. WSR 22-21-093, § 192-170-010, filed 10/17/22, effective 11/17/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-010, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-170-010, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042 and 50.20.010. WSR 20-11-022, § 192-170-010, filed 5/13/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-170-010, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-010, filed 5/12/10, effective 6/12/10.]

NEW SECTION**WAC 192-170-055 Suitable work factors—Public health emergency.**

In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider the degree of risk to the health of those residing with the individual during a public health emergency. Work will only be considered unsuitable due to risks associated with a public health emergency on the days the public health emergency declaration is in effect.

[]

OTS-4429.1

AMENDATORY SECTION (Amending WSR 22-13-007, filed 6/2/22, effective 7/3/22)

WAC 192-320-078 Catastrophic occurrence. For the purposes of RCW 50.29.021 (3) (a) (iii) ~~((7))~~:

(1) "Catastrophic occurrence" includes ((an infection from a)) the presence of any dangerous, contagious, or infectious disease that is the subject of a public health emergency at the employer's ((place of business)) plant, building, worksite, or other facility that causes the employer to close or severely curtail operations.

(2) In order to qualify for relief of benefit charges, the disease must be the subject of a public health emergency at the time of the closure or curtailment of operations.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.04.030, 50.20.010, 50.20.010 (1) (a), (1) (e) and (1) (c), 50.20.050 (1) (b) (ii) and (2) (b) (ii), and (3), 50.20.240, 50.20.044, 50.22.155 (2) (d), (2) (b) (iv), (2) (b) (i) and (ii), 50.12.220(6), 50.60.030, 50.29.021 (3) (a) (iii), and (5), 50.20.160, 50.20.170, 50.20.190, and 50.20.100. WSR 22-13-007, § 192-320-078, filed 6/2/22, effective 7/3/22.]