

**WSR 09-14-058**  
**PROPOSED RULES**  
**SOUTHWEST CLEAN**  
**AIR AGENCY**

[Filed June 29, 2009, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-04-026.

Title of Rule and Other Identifying Information: SWCAA 400-030 Definitions. This is an existing section containing the definitions of words and phrases used throughout SWCAA 400. Most definitions are identical to associated federal definitions.

SWCAA 400-040 General Standards for Maximum Emissions. This is an existing section that establishes a minimum set of air emission standards for all sources.

SWCAA 400-045 Permit Application for Nonroad Engines. This is an existing section identifying requirements for permit applications for nonroad engine projects.

SWCAA 400-046 Application Review Process for Nonroad Engines. This is an existing section identifying requirements for the processing and approval of permit applications for nonroad engine projects.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. This is an existing section that establishes a minimum set of air emission standards for all combustion and incineration units. Additional requirements are provided for specific categories of combustion and incineration units.

SWCAA 400-052 Stack Sampling of Large Combustion Sources. This is an existing section establishing a minimum set of requirements for sampling emissions from major combustion sources. This section is being proposed for deletion.

SWCAA 400-070 Emission Standards for Certain Source Categories. This is an existing section that establishes minimum air emission standards and work practices for selected general source categories.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. This is a new section that establishes air emission standards, work practices, and monitoring/reporting requirements to be used in lieu of new source review for selected small source categories.

SWCAA 400-074 Gasoline Transport Tankers. This is an existing section containing registration and compliance requirements for gasoline transport tankers.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. This is an existing section that adopts by reference the federal standards relating to hazardous air pollutant standards contained in 40 C.F.R. Parts 61, 63, and 65.

SWCAA 400-100 Registration Requirements. This is an existing section identifying requirements for registration and inspection of air contaminant sources.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. This is an existing section identifying those sources that are exempt from the registration requirements of SWCAA 400-100.

SWCAA 400-105 Records, Monitoring and Reporting. This is an existing section identifying requirements for emis-

sion monitoring, emission sampling and reporting, and submission of emission inventories.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. This is an existing section that establishes a minimum set of standards for emission testing and monitoring at air contaminant sources.

SWCAA 400-107 Excess Emissions. This is an existing section identifying requirements for the reporting of excess emissions, and providing penalty relief for unavoidable excess emissions.

SWCAA 400-109 Air Discharge Permit Applications. This is an existing section that identifies requirements for the submission and content of air discharge permit applications.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). This is an existing section identifying requirements for the processing and approval of air discharge permit applications.

SWCAA 400-115 Standards of Performance for New Sources. This is an existing section that adopts by reference the federal New Source Performance Standards contained in 40 C.F.R. Part 60.

SWCAA 400-130 Use of Emission Reduction Credits. This is an existing section identifying requirements, and procedures of use, for emission reduction credits.

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

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. This is an existing section identifying requirements for maintenance of SWCAA's emission credit bank, issuance of emission reduction credits, and management of expired credits.

SWCAA 400-171 Public Involvement. This is an existing section identifying requirements for public notice of agency actions, and the process by which public involvement is to be administered. This section also identifies those documents that are subject to a formal public notice and those that are not subject to a formal public notice.

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

SWCAA 400 Appendix C, Federal Standards Adopted by Reference. This is a new section containing informational lists of all federal regulations adopted by reference via SWCAA 400-075 and 400-115.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 1, 2009, at 3:00 p.m.

Date of Intended Adoption: October 1, 2009.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, e-mail wess@swcleanair.org, fax (360) 576-0925, by September 17, 2009.

Assistance for Persons with Disabilities: Contact Tina Hallock by September 17, 2009, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-030 Definitions. The proposed rule changes revise existing definitions and add new definitions, and make administrative edits. The changes are necessary to maintain consistency with state and federal programs.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes replace selected uses of the term "stationary source" with the term "source," revise the language of 400-040 (1)(a) to require maintenance of a soot blowing/grate cleaning schedule with SWCAA, and revise 400-040(1) to include exemptions for smoke generators and military training. The changes are necessary [to] maintain consistency between agency rules and forthcoming agency policy.

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes raise the exemption threshold for IC engines from an aggregate of two hundred horsepower to an aggregate of five hundred horsepower, lower the permit application filing fee from \$600 to \$500, and adds rule language for expedited review of permit applications, and make administrative edits. The changes are being proposed to match similar features in the agency's stationary source application requirements.

SWCAA 400-046 Application Review Process for Nonroad Engines. The proposed rule changes update incorporation by reference citations for ambient air quality standards and associated federal regulations, allow for the combination of nonroad engine and stationary source permit applications, revise final determination requirements to include professional engineer review, clarify the effective date of permits, and add registration requirements for permitted nonroad engines. The changes are being proposed as general improvements to the permitting regulation.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. The proposed rule change expands stipulated category specific measurement corrections to incorporate asphalt mixers, aggregate dryers, thermal oxidizers and flares. The changes are being proposed in the interest of improving the standard requirements for reporting emissions from the affected source categories.

SWCAA 400-052 Stack Sampling of Major Combustion Sources. SWCAA is proposing to delete this rule section in its entirety. SWCAA has determined that the provisions of this rule section are obsolete, and should be removed from its regulations.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes modify the section title to avoid confusion with new SWCAA rule section, revise language of 400-070 (2)(a) to require maintenance of a soot blowing/grate cleaning schedule on file with the agency, add a ten gpm flowrate limit for nozzles at gasoline dispensing facilities, prohibit the installation/reinstallation of perchloroethylene dry cleaning systems effective July 1, 2010, add category specific requirements (natural gas fired water heaters, rendering plants, outdoor wood-fired boilers), and make administrative edits. The changes are intended to provide better control of air emissions and provide a sunset date for new perchloroethylene dry cleaner installations.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes establish emission standards, work practices, and monitoring/reporting requirements for selected small source categories (coffee roasters, small gas-fired boilers/heaters, emergency service internal combustion engines, petroleum dry cleaners, rock crushers, aggregate screens). The intent of the changes is to provide a quicker and less expensive mechanism that can be used to approve affected emission units in lieu of new source review pursuant to SWCAA 400-110.

SWCAA 400-074 Gasoline Transport Tankers. The proposed rule changes revise the applicability of subsection 400-074(1) to be consistent with the remainder of rule section, and update an outdated rule citation.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. The proposed rule changes update the adoption by reference of federal regulations from 40 C.F.R. 61 and 63, expand the associated adoption exception list, and remove the informational list of individual standards from the rule section. The changes are necessary to support the agency's implementation of the affected federal standards.

SWCAA 400-100 Registration Requirements. The proposed rule changes replace "control officer" with either "executive director" or "agency," add mandatory registration requirements for gas stations with annual throughput >200,000 gallons and dry cleaning plants, remove outdated tiers from the registration fee list, revise existing rule language regarding delinquent registration fees, and make administrative edits. The changes are intended to incorporate current agency policy and improve clarity.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed rule changes unlink exemption thresholds for the registration and NSR programs, clarify process for exemption based on emission levels, remove category exemption for food preparation facilities, and clarify the applicability of selected exemptions. The changes are intended to make exemption criteria easier to understand and apply.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes add ammonia, sulfuric acid mist, and reduced sulfur compounds to the list of inventory pollutants, update adoption by reference of federal regulations, remove reference to "actual emissions" from the language of 400-105 (1)(b), add a reference to 400-107 for monitoring system malfunctions, and make administrative edits. The changes are intended to improve consistency in the various monitoring and reporting requirements that are applicable to registered sources.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes update adoption by reference of federal regulations, revise test/monitoring report requirements, revise emission monitoring span gas requirements to accommodate actual emissions which are significantly lower than permitted emission limit, and revise monitoring record requirements to include specified production parameters. The changes are necessary to ensure that test/monitoring reports submitted to SWCAA contain all of the information required to determine compliance.

SWCAA 400-107 Excess Emissions. The proposed rule changes reduce the specified reporting timeline for excess emissions that pose a potential threat to human health or safety and make administrative edits. The changes are necessary to make the affected reporting timeline consistent with similar reporting timelines in other air pollution programs.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes update rule citations for ecology's PSD program, add a mechanism for sources to formally request applicability determinations, establish exemption language specific to the NSR program, revise the billing process for legal notices, add language regarding expedited review of permit applications, revise application review fees, and make administrative edits. The changes are necessary to formally incorporate current agency practice into the applicable rules.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes update rule citations for ecology's PSD program, revise citations for applicable NSR exemption thresholds, clarify exemptions for process changes and changes in raw material composition, remove language regarding mandatory permitting of all NSPS, NESHAP, and MACT source categories, clarify air quality analysis requirements, update adoption by reference of federal regulations/standards, modify existing language to allow combined nonroad engine and stationary source permit applications, clarify the effective/expiration date of permits, expand/clarify the basis for reopening a permit for cause, and make administrative edits. The changes are necessary to ensure consistency with overlapping state/federal regulations and to formally incorporate agency permitting policy.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes update adoption by reference of 40 C.F.R. 60, update the exception list to adoption by reference of 40 C.F.R. 60, correct a citation error in 400-115(2), and remove the informational list of adopted federal standards. The changes are necessary for proper implementation and enforcement of the affected federal standards.

SWCAA 400-130 Use of Emission Reduction Credits. The proposed rule changes make minor administrative edits to the rule section. The changes are not substantial.

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank. The proposed rule changes define "old actual emissions rate," remove the term "equivalent document" from the rule language, and make administrative edits. The changes are being proposed in order to make the agency's credit program consistent with applicable federal requirements.

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. The proposed rule changes replace the term "control officer" with the term "agency" throughout the rule section. The changes are not substantial and are intended to be consistent with the terminology used in the remainder of SWCAA 400.

SWCAA 400-171 Public Involvement. The proposed rule changes clarify application of the fifteen day waiting period when public notice is given via newspaper publication, clarify the process for requesting a public comment period, and revise the list of mandatory public comment

actions, and replace the term "control officer" and "order" with the terms "executive director" and "order or permit."

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed rule change clarifies the effective date of the vertical dispersion requirement adopted in the 2006 revision of SWCAA 400-200. The proposed change is necessary for proper implementation of the affected requirement.

SWCAA 400, Appendix C, Federal Standards Adopted by Reference. The proposed rule change creates a new appendix containing informational lists of the federal regulations adopted by reference via SWCAA 400-075 and 400-115. The informational lists of adopted federal standards are extensive and are referenced in multiple rule sections. To improve usability and simply [simplify] the affected rule sections, the informational lists are being moved to a stand alone appendix.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provision of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 70.94.141(1), section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. SWCAA is not voluntarily invoking section 201, chapter 403, Laws of 1995, for this action.

June 24, 2009

Robert D. Elliott  
Executive Director

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

### SWCAA 400-030 Definitions

[Statutory Authority: Chapter 70.94.030 RCW, and 70.94.141 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 3/20/84; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073 filed 11/13/06, effective 12/14/06]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) "**Climate change**" means ~~((a reported meteorological phenomenon, according to which the average temperature on earth is gradually increasing over its level in recent history. This rise in temperature is attributed to the increased concentration in the atmosphere of gases such as carbon dioxide that trap heat radiating upward and reradiate it toward earth.))~~ any long-term significant change over durations ranging from decades to millions of years in the "average weather" of a region or the earth as a whole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(34) "**Emergency service**" means operation that is limited solely to emergency situations and required testing and

maintenance. Emergency situations are those which occur without significant warning and are beyond the control of the permittee, owner or operator.

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

((35)) (36) "**Emission control technology**" means emission control equipment integral or in addition to the emission unit or other technology, device, component or control parameter that is integral to the basic design of an emission unit((;)) (i.e., low NO<sub>x</sub> burner for a boiler or turbine).

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

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

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

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

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

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

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

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

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

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

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

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

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

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,

(xiv) Coke oven batteries,

(xv) Sulfur recovery plants,

(xvi) Carbon black plants (furnace process),

(xvii) Primary lead smelters,

(xviii) Fuel conversion plants,

(xix) Sintering plants,

(xx) Secondary metal production plants,

(xxi) Chemical process plants,

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

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

(xxiv) Taconite ore processing plants,

(xxv) Glass fiber processing plants,

(xxvi) Charcoal production plants; and

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

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

((43)) (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 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

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

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

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

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

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

~~((47))~~ (48) **"Fossil fuel-fired steam generator"** means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

~~((48))~~ (49) **"Fugitive dust"** means a type of particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

~~((49))~~ (50) **"Fugitive emissions"** means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive emissions are to be considered in determining whether a stationary source is a major source under section 112 of the Federal Clean Air Act.

~~((50))~~ (51) **"General process unit"** means an emission unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

~~((51))~~ (52) **"Good agricultural practices"** means economically feasible practices that are customary among or appropriate to farms and ranches of a similar nature in the local area.

~~((52))~~ (53) **"Good engineering practice"** (GEP) refers to a calculated stack height based on the equation specified in SWCAA 400-200 (2)(a)(ii).

~~((53))~~ (54) **"Greenhouse gas"** means a gas that has the ability to contribute to a greenhouse effect in the ambient atmosphere. Greenhouse gases include carbon dioxide ( $\text{CO}_2$ ), methane ( $\text{CH}_4$ ), nitrous oxide ( $\text{N}_2\text{O}$ ), sulfur hexafluoride ( $\text{SF}_6$ ), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

~~((54))~~ (55) **"Incinerator"** means a furnace used primarily for the thermal destruction of waste.

~~((55))~~ (56) **"In operation"** means engaged in activity related to the primary design function of a "stationary source."

~~((56))~~ (57) **"Installation"** means the act of installing, ~~(which means)~~ 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))~~ (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."

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.

~~((58))~~ (59) **"Maintenance Area"** or **"Maintenance Plan Area"** means a geographical area within the jurisdiction of SWCAA which was formerly designated as a nonattainment area and which has been redesignated as an attainment area as provided under Section 107(d) of the Federal Clean Air Act. The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

~~((59))~~ (60) **"Maintenance pollutant"** means a pollutant for which a maintenance plan area was formerly designated as a nonattainment area.

~~((60))~~ (61)(a) **"Major modification,"** as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.

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

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

(A) Routine maintenance, repair, and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

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

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

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

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

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

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

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

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

(I) When the permitting agency has reason to believe that the pollution control project would result in a significant net

emissions increase in representative actual annual emissions of any criteria pollutant over levels used for that "stationary source" in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Federal Clean Air Act, if any; and

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

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

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

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

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

(A) Routine maintenance, repair and replacement;

(B) Use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

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

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

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

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

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

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

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

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

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

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

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

~~((61))~~ (62)(a) **"Major stationary source,"** as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and -112), means:

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

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

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

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

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

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

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;



(O) Carbon black plants (furnace process);  
 (P) Primary lead smelters;  
 (Q) Fuel conversion plants;  
 (R) Sintering plants;  
 (S) Secondary metal production plants;  
 (T) Chemical process plants;  
 (U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

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

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

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

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

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

(b) "**Major stationary source,**" as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

(i) Any of the following "stationary sources" of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Federal Clean Air Act:

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

(B) Coal cleaning plants (with thermal dryers);

(C) Kraft pulp mills;

(D) Portland cement plants;

(E) Primary zinc smelters;

(F) Iron and steel mill plants;

(G) Primary aluminum ore reduction plants;

(H) Primary copper smelters;

(I) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(J) Hydrofluoric, sulfuric, and nitric acid plants;

(K) Petroleum refineries;

(L) Lime plants;

(M) Phosphate rock processing plants;

(N) Coke oven batteries;

(O) Sulfur recovery plants;

(P) Carbon black plants (furnace process);

(Q) Primary lead smelters;

(R) Fuel conversion plants;

(S) Sintering plants;

(T) Secondary metal production plants;

(U) Chemical process plants;

(V) Fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

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

(X) Taconite ore processing plants;

(Y) Glass fiber processing plants; and

(Z) Charcoal production plants.

(ii) Regardless of the "stationary source" size specified in (b)(i) of this subsection, any "stationary source" which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Federal Clean Air Act; or

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

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

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

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

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

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

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

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

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

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

~~((62))~~ (64) "Mandatory Class I federal area" means any area defined in Section 162(a) of the Federal Clean Air Act. The mandatory Class I federal areas potentially affected by emissions from "sources" within SWCAA jurisdiction include the following:

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

~~((63))~~ (65) "Masking" means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

~~((64))~~ (66) "Materials handling" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant alteration of the chemical or physical properties of the material.

~~((65))~~ (67) "Modification" means any physical change in, or change in the method of operation of, a "stationary source" that increases the amount of any air contaminant emitted by such "stationary source" or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

~~((66))~~ (68) "Motor vehicle" means any self propelled vehicle required to be licensed pursuant to Chapter 46.16 RCW.

~~((67))~~ (69) "National Ambient Air Quality Standard" (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM<sub>10</sub>, PM<sub>2.5</sub>), ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

~~((68))~~ (70) "National Emission Standards for Hazardous Air Pollutants" (NESHAPS) means the federal rules in 40 CFR Part 61.

~~((69))~~ (71) "National Emission Standards for Hazardous Air Pollutants for Source Categories" means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

~~((70))~~ (72) "Natural conditions" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

~~((71))~~ (73)(a) "Net emissions increase," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) "**Net emissions increase**," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means:

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

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

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

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

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

(iv) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides, which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM<sub>10</sub> emissions can be used to evaluate the net emissions increase for PM<sub>10</sub>.

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

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

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

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

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

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

~~((72))~~ (74) "**New source**" means one or more of the following:

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

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

(c) Restart of a "stationary source" after permanent shut-down;

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

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

~~((73))~~ (75) "**New Source Performance Standards**" (NSPS) means the federal rules in 40 CFR Part 60.

~~((74))~~ (76) "**Nonattainment area**" means a geographic area designated by EPA in 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria air pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

~~((75))~~ (77) "**Nonroad engine**" means:

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

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

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

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

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

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

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

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

~~((76))~~ (78) "**Nonroad engine permit**" means a regulatory order issued by the Agency to approve the installation, replacement or alteration of a nonroad engine. This term

does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((77))~~ (79) "**Nonroad engine permit application**" means a written application for installation, replacement or alteration of a nonroad engine. This term does not apply to any permitting action conducted pursuant to SWCAA 400-110 or Chapter 173-401 WAC.

~~((78))~~ (80) "**Notice of Construction application**" (NOC) means a written application requesting approval for installation, replacement, modification, or other alteration of an emission unit at an air contaminant source or replacement or substantial alteration of control technology at an existing "stationary source." Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109.)

~~((79))~~ (81) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

~~((80))~~ (82) "**Open burning**" or "**outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Open burning includes all forms of outdoor burning except those listed as exempt in SWCAA 425-020. Wood waste disposal in wigwam burners is not considered open or outdoor burning.

~~((81))~~ (83) "**Operating permit**" means a permit issued pursuant to 40 CFR Part 70 or Chapter 173-401 WAC.

~~((82))~~ (84) "**Operating permit application**" means the same as "application" as described in WAC 173-401-500 and -510.

~~((83))~~ (85) "**Order**" means any regulatory order issued by ~~(Ecology or)~~ the Agency or Ecology pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

~~((84))~~ (86) "**Order of Approval**" means a regulatory order issued by ~~(Ecology or)~~ the Agency or Ecology to approve a Notice of Construction or air discharge permit application. "Order of Approval" means the same as "air discharge permit." Note: For more information refer to SWCAA 400-230.

~~((85))~~ (87) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

~~((86))~~ (88) "**Particulate matter**" (PM) means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

~~((87))~~ (89) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable

reference methods, or an equivalent or alternative method specified in Title 40, Chapter I of the Code of Federal Regulations or by a test method specified in the Washington SIP.

~~((88))~~ (90) "**Parts per million by volume**" (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume. When calculating or measuring the ppmv of a given gas or carrier stream, such measurement or calculation shall be exclusive of water and particulate matter.

~~((89))~~ (91) "**Permanent shutdown**" means permanently stopping or terminating ~~(all processes at)~~ the operation of a "stationary source" or "emission unit." Except as provided in subsections (a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees. ~~(Failure to pay registration fees for greater than one year is presumed to constitute a permanent shutdown. A shutdown lasting two or more years is presumed to be permanent, except that this presumption does not apply in the case of portable equipment operating under a valid permit pursuant to SWCAA 400-110(6).)~~

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

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

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

~~((90))~~ (92) "**Permitting agency**" means Ecology or the local air pollution control agency with jurisdiction over a "source."

~~((91))~~ (93) "**Person**" means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, association, partnership, political subdivision, municipality, or government agency.

~~((92))~~ (94) "**Pipeline quality natural gas**" means natural gas fuel with a total fuel sulfur content of 0.5 grains per 100 standard cubic feet or less.

~~((93))~~ (95) "**PM<sub>10</sub>**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((94))~~ (96) "**PM<sub>10</sub> emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the Washington SIP.

~~((95))~~ (97) "**PM<sub>2.5</sub>**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

~~((96))~~ (98) "**PM<sub>2.5</sub> emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 50 or by a test method specified in the Washington SIP.

~~((97))~~ (99) "**Pollutant**" means the same as air contaminant, air pollutant and air pollution. (Refer to definitions (4) and (7))

~~((98))~~ (100) "**Portable equipment**" means a "stationary source" consisting of one or more emission units that is portable or transportable and capable of being operated at multiple locations. Portable equipment is subject to the requirements of SWCAA 400-109 and 400-110. Portable equipment includes, but is not limited to, rock crushers, portable asphalt plants, soil/water remediation plants, and portable concrete mixing plants (Portland cement).

~~((99))~~ (101) "**Potential to emit**" means the maximum capacity (i.e., design capacity) of a "stationary source" to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the "stationary source" to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a "stationary source."

~~((100))~~ (102) "**Prevention of Significant Deterioration**" (PSD) means the program set forth in WAC 173-400-141 and adopted by reference in SWCAA 400-141.

~~((101))~~ (103) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

~~((102))~~ (104) "**Reasonably attributable**" means attributable by visual observation or any other technique the Agency deems appropriate.

~~((103))~~ (105) "**Reasonably available control technology**" (RACT) means the lowest emission limit that a particular "stationary source" or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual "stationary source" or source category taking into account the impact of the "stationary source" upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any "stationary source" or source category shall be adopted only after public notice and opportunity for comment are afforded. RACT shall apply to existing "stationary sources."

~~((104))~~ (106) "**Regulatory order**" means an order issued by ~~(Ecology or)~~ the Agency or Ecology to an air contaminant source, any applicable provision of Chapter 70.94 RCW, or the rules adopted there under, or, the regulations of the Agency. Note: For further clarification, refer to the def-

initions of "Order," "Order of Approval," "air discharge permit," "nonroad engine permit," and SWCAA 400-230.

~~((105))~~ (107) "**Residual Oil**" means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

~~((106))~~ (108) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a "major stationary source" or "major modification," but do not come from the "major stationary source" or "major modification" itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the "major stationary source" or "major modification" which causes the secondary emissions. Secondary emissions may include, but are not limited to:

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

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

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

~~((107))~~ (110)(a) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in maintenance plan or nonattainment areas (SWCAA 400-111 and 400-112), means, in reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

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

(b) "**Significant**," as it applies to "stationary sources" subject to requirements for "new sources" in attainment or unclassified areas (SWCAA 400-113), means: (i) In reference to a net emissions increase or the potential of a "stationary source" to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

<i>Pollutant</i>	<i>Emission Rate</i>
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy - PM 15 tpy - PM <sub>10</sub>
Volatile organic compounds:	40 tpy
Fluorides:	3 tpy

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

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

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

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

~~((108))~~ (112) "Source" means all of the emission units (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

~~((109))~~ (113) "Source category" means all "sources" or "stationary sources" of the same type or classification as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

~~((110))~~ (114) "Southwest Clean Air Agency" (SWCAA) means the local ~~(air pollution)~~ clean air agency empowered to enforce and implement the Federal Clean Air Act (42 U.S.C. 7401, et seq.) and the Clean Air Washington Act Chapter 70.94 RCW in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum Counties of Washington State.

~~((111))~~ (115) "Stack" means any emission point in a "stationary source" designed to emit solids, liquids, or gases into the air, including a pipe or duct.

~~((112))~~ (116) "Stack height" means the height of an emission point measured from the ground-level elevation at the base of the stack.

~~((113))~~ (117) "Standard conditions" means a temperature of 20 degrees C (68 degrees F) and a pressure of 29.92 inches (760 mm) of mercury.

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

~~((114))~~ (119) "State Implementation Plan" or "Washington SIP" means the Washington SIP in 40 CFR Part 52, Subpart WW. The SIP contains federal, state and local regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

~~((115))~~ (120) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road engine or non-road vehicle as defined in Section 216(11) of the Federal Clean Air Act.

~~((116))~~ (121) "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

~~((117))~~ (122) "Synthetic minor" means any "stationary source" whose potential to emit has been limited below applicable air operating permit program (40 CFR Part 70) thresholds by means of a federally enforceable order, rule or permit condition.

~~((118))~~ (123) "Total reduced sulfur" (TRS) means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA Method 16 in 40 CFR Part 60, Appendix A or an EPA approved equivalent method and expressed as hydrogen sulfide.

~~((119))~~ (124) "Total suspended particulate" (TSP) means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

~~((120))~~ (125) "Toxic air pollutant" (TAP) means any Class A or B toxic air pollutant listed in WAC 173-460-150 or -160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 or -160. The term toxic air

pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

~~((121))~~ (126) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA in 40 CFR Part 81.

~~((122))~~ (127) "**United States Environmental Protection Agency**" (USEPA) means the federal agency empowered to enforce and implement the Federal Clean Air Act (42 USC 7401, et seq.) and shall be referred to as EPA.

~~((123))~~ (128) "**Upgraded**" is defined only for gasoline dispensing facilities and means the modification of a gasoline storage tank or piping to add cathodic protection, tank lining or spill and overfill protection that involves removal of ground or ground cover above a portion of the product piping.

~~((124))~~ (129) "**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.

~~((125))~~ (130) "**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.

~~((126))~~ (131) "**Visibility impairment of Class I areas**" means visibility impairment within the Class I area and visibility impairment of any formally designated integral vista associated with the Class I area.

~~((127))~~ (132) "**Volatile organic compound**" (VOC) means:

(a) Any carbon compound that participates in atmospheric photochemical reactions. Exceptions: The following compounds are not a VOC: acetone; ammonium carbonate; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ethane; methane; methyl acetate; methylene chloride (dichloromethane); methyl formate; dimethyl carbonate; propylene carbonate; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropro-

pane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mf); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCH<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCH<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); and perfluorocarbon compounds that fall into these classes:

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

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

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

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

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

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

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

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

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

### SWCAA 400-040 General Standards for Maximum Emissions

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, and 70.94.154 RCW. Original adoption by Board 12/17/68 (Regulation 1); Amended by Board 10/29/69 (Regulation 2); Amended by Board 12/18/79; Amended by Board 3/20/84; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

All "~~(stationary)~~" sources" and emission units are required to meet the emission standards of this section. Where an emission standard listed in another section is applicable to a specific emission unit, such standard shall take precedent over a general emission standard listed in this section. When two or more emission units are connected to a common

stack and the operator elects not to provide the means or facilities to sample emissions from the individual emission units, and the relative contributions of the individual emission units to the common discharge are not readily distinguishable, then the emissions of the common stack must meet the most restrictive standard of any of the connected emission units. Further, all emission units are required to use reasonably available control technology (RACT) that may be determined for some "stationary sources" or "source categories" to be more stringent than the applicable emission limitations of this regulation or any Chapter of Title 173 WAC. Where current controls are determined to be less than RACT, the Agency shall, as provided in RCW 70.94.154, define RACT for each "stationary source" or "source category" and issue a rule or regulatory order requiring the installation of RACT.

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

(a) When the emissions occur due to soot blowing/grate cleaning and the operator can demonstrate that the emissions will not exceed twenty percent opacity for more than fifteen minutes in any eight consecutive hours. The intent of this provision is to permit the soot blowing and grate cleaning necessary to the operation of boiler facilities. ~~((This practice))~~ Except for testing and troubleshooting, soot blowing/grate cleaning is to be scheduled for the same approximate times each day, (and the Agency shall be advised of) The boiler operator shall maintain a written schedule on file with the Agency, and provide updates as necessary.

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

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

(d) When an alternate opacity limit has been established per RCW 70.94.331 (2)(c).

(e) Exemptions from the twenty percent opacity standard.

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

(A) No visible emissions shall cross the boundary of the military training site/reservation.

(B) The operation shall have in place methods, which have been reviewed and approved by the permitting agency, to detect changes in weather that would cause the obscurant to cross the site boundary either during the course of the exercise or prior to the start of the exercise. The approved methods shall include provisions that cancel the training exercise, or cease the use of obscurant during the training exercise until weather conditions would allow such training to occur with-

out causing obscurant to leave the site boundary of the military site/reservation.

(ii) Visible emissions from the "smoke generator" used for testing and certification of visible emissions readers per the requirements of 40 CFR 60, Appendix A, Reference Method 9 and Ecology methods 9A and 9B shall be exempt from compliance with the twenty percent opacity limitation while being used for certifying visible emission readers.

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

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

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

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

(4) **Odors.**

(a) Any person who shall cause or allow the generation of any odor from any "source," which may unreasonably interfere with any other property owner's use and enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

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

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

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

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

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

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

(6) **Sulfur dioxide.**

No person shall cause or permit the emission of a gas containing sulfur dioxide from any emission unit in excess of one thousand ppm of sulfur dioxide on a dry basis, corrected to seven percent oxygen or twelve percent carbon dioxide as



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

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

(8) **Fugitive dust sources.**

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

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

**SWCAA 400-045 Permit Application for Nonroad Engines**

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW; Original adoption 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066, filed 11/15/05, effective 12/16/05; 06-23-073 filed 11/13/06, effective 12/14/06]

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

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030~~(((75)))~~ except for the following:

- (a) Nonroad engine ~~(((projects)))~~ installations with an aggregate power rating less than ~~(((200)))~~ 500 horsepower;
- (b) Small/residential water well drilling rigs;
- (c) Portable firefighting equipment;
- (d) Mobile cranes and pile drivers;
- (e) Engines used for emergency flood control;
- (f) Engines used to power carnival or amusement rides;

or

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

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

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

(4) **Application Fees.** A filing fee of ~~\$\$\$((600.00 and))~~ 500 plus a review fee, as shown in Table A, shall be submit-

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

Expedited Application Review

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

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

<i>Equipment/Activity</i>	<i>Associated Work Hours</i>	<i>Review Fee</i>
i. Nonroad Engine (Aggregate horsepower rating):		
<del>(((Less than 500)))</del>	40	\$ <del>700.00</del>
500 or more but less than 2,000	14	1,000.00
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
ii. Minor Change to Existing Permit Conditions:	8	\$ 600.00
iii. Other (Not classified above):		\$200.00 per ton of emission
iv. Emergency Applications	Double the normal application and review fee	

**TABLE B  
Additional Review Fees**

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

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

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

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The

applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

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

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

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

[Statutory Authority: Chapter 70.94.040 RCW, 70.94.141 RCW, Original adoption 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073 filed 11/13/06, effective 12/14/06]

(1) **Applicability.**

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

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

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

(2) **Requirements.**

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

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

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable ~~((requirements for ambient air increments and))~~ ambient air quality standards (See Table A below). Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A.

TABLE A  
Emission Concentration Regulatory Standards

Pollutant	Averaging Period	PSD Ambient Increment <i>40 CFR 51.166(c)</i>		National Ambient Air Quality Standards (NAAQS) <i>40 CFR 50</i>		State Ambient Air Quality Standards <i>173-470, 474, and 475 WAC</i>
		Class I µg/m <sup>3</sup>	Class II µg/m <sup>3</sup>	Primary Standard µg/m <sup>3</sup> (ppm)	Secondary Standard µg/m <sup>3</sup> (ppm)	Ambient Standard µg/m <sup>3</sup> (ppm)
Carbon Monoxide (CO)	8-Hour	—	—	10,000 <sup>b</sup> (9.0)	—	10,000 <sup>b</sup> (9.0)
	1-Hour	—	—	40,000 <sup>b</sup> (35.0)	—	40,000 <sup>b</sup> (35.0)
Nitrogen Dioxide (NO <sub>2</sub> )	Annual <sup>a</sup> (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O <sub>3</sub> )	1-Hour <sup>e</sup>	—	—	(0.12)	(0.12)	(0.12)
	8-Hour <sup>f</sup>	—	—	<del>((0.08))</del> (0.075)	<del>((0.08))</del> (0.075)	—
Sulfur Dioxide (SO <sub>2</sub> )	Annual <sup>a</sup>	2	20	80 (0.03)	—	53 (0.02)
	24-Hour	5	91	365 <sup>b</sup> (0.14)	—	260 <sup>b</sup> (0.10)
	3-Hour	25	512	—	1,300 <sup>b</sup> (0.50)	—
	1-Hour	—	—	—	—	1,065 <sup>b</sup> (0.40) <sup>d</sup>
Lead	Quarterly Average	—	—	1.5	1.5	1.5
<del>((Total Suspended Particulates (TSP)))</del>	<del>((Annual<sup>a</sup> (geometric-mean)))</del>	—	—	—	—	<del>((60))</del>
	<del>((24-Hour))</del>	—	—	—	—	<del>((150<sup>b</sup>))</del>

Pollutant	Averaging Period	PSD Ambient Increment 40 CFR 51.166(c)		National Ambient Air Quality Standards (NAAQS) 40 CFR 50		State Ambient Air Quality Standards 173-470, 474, and 475 WAC
		Class I µg/m <sup>3</sup>	Class II µg/m <sup>3</sup>	Primary Standard µg/m <sup>3</sup> (ppm)	Secondary Standard µg/m <sup>3</sup> (ppm)	Ambient Standard µg/m <sup>3</sup> (ppm)
Particulate Matter less than 10 µm (PM <sub>10</sub> )	Annual (arithmetic mean)	4	17	((50))	((50))	50
	24-Hour <sup>i</sup>	8	30	150 <sup>b</sup>	150 <sup>b</sup>	150 <sup>b</sup>
Particulate Matter less than 2.5 µm (PM <sub>2.5</sub> )	Annual <sup>g</sup> (arithmetic mean)	—	—	15	15	—
	24-Hour <sup>h</sup>	—	—	((65)) 35	((65)) 35	—

µg/m<sup>3</sup> = micrograms per cubic meter; ppm = parts per million

<sup>a</sup> Never to be exceeded.

<sup>b</sup> Not to be exceeded more than once per year.

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

<sup>d</sup> Also, 0.25 ppm not to be exceeded more than twice in seven days.

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

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

<sup>g</sup> Based on the 3-year average of annual arithmetic mean PM<sub>2.5</sub> concentrations.

<sup>h</sup> Based on the 3-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitor within an area.

<sup>i</sup> Based on the 99th percentile of 24-hour PM<sub>10</sub> concentrations at each monitor.

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

~~((If the ambient impact in a Class I or Class II area of a proposed project is predicted to be less than the respective ambient air increments, the air quality analysis is complete at that point.))~~ If the ambient impact of a proposed project could potentially exceed ~~((the))~~ an applicable ambient air increment~~((s))~~, the Agency may require that the applicant ~~((shall))~~ demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, ~~((2002))~~ 2008). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

**(3) Application processing/completeness determination.** Within ~~((thirty (30)))~~ 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

**(4) Final determination.**

(a) Within ~~((sixty (60)))~~ 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

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

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

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

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

jected and approved commencement date. The Agency may specify an earlier date for commencement in a nonroad engine permit.

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

**(8) Change of conditions.**

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

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

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

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

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-045(3) shall apply to these requests.

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

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

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

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

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

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

**SWCAA 400-050 Emission Standards for Combustion and Incineration Units**

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by board 12/18/79; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 01-

05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

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

(2) **Incinerators.** For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by applicable sampling methods or other procedures approved in advance by the Agency including but not limited to those methods contained in "Source Test Manual - Procedures for Compliance Testing," State of Washington, Department of Ecology. Incinerators shall be operated only during daylight hours unless written permission to operate at other times is received from the Agency.

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

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

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers

the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (4)(c) of this subsection.

(c) Exempted units. The following types of incineration units are exempt from this subsection:

(i) Pathological waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) Agricultural waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) that meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting agency that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) Municipal waste combustion units. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

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

(B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (in effect on July 1, 2000), Eb (in effect on July 1, 2000), and AAAA (in effect on June 1, 2001), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid

waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

(I) Notify the Agency that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned and the weight of all other fuels and wastes burned in the unit.

(iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2000);

(v) Small power production facilities. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vi) Cogeneration facilities. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator of the unit has notified the permitting agency that the unit meets all of these criteria.

(vii) Hazardous waste combustion units. Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under Section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under Subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2002).

(viii) Materials recovery units. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on July 1, 2002).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) Cyclonic barrel burners. See 40 CFR 60.2265 (in effect on July 1, 2002).

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

(xii) Cement kilns. Kilns regulated under Subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazard-

ous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2002).

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

(xiv) Chemical recovery units. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) Laboratory analysis units. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on July 1, 2002).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on July 1, 2002) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

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

(i) The federal rule contains these major components:

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

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

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

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

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

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

(J) Title V operating permits requirements in 60.2805;

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

(L) Definitions in 60.2875; and

(M) Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

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

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

(iv) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, Chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

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

(A) The final control plan (Increment 1) must be submitted no later than January 1, 2004. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units.** Small Municipal waste combustion units constructed on or before August 30, 1999. (See SWCAA 400-115(1) for the requirements for a municipal waste combustion unit constructed after August 30, 1999, or reconstructed or modified after June 6, 2001.)

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in (c)(viii) and (ix) of this subsection.

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

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) Small municipal waste combustion units that combust less than 11 tons per day. Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

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

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

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) Small power production units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

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

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

(iii) Cogeneration units. Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under Section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

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

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

(iv) Municipal waste combustion units that combust only tires. Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

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

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

(v) Hazardous waste combustion units. Units are exempt from this section if the units have received a permit under Section 3005 of the Solid Waste Disposal Act.

(vi) Materials recovery units. Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) Co-fired units. Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable permit limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

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

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

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) Plastics/rubber recycling units. Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) Units that combust fuels made from products of plastics/rubber recycling plants. Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical

plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) Cement kilns. Cement kilns that combust municipal solid waste are exempt.

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on July 1, 2002) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on July 1, 2002).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, 2002), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (in effect on July 1, 2002).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, 2002) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on July 1, 2002).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, 2002) to calculate the combustion capacity of a municipal waste combustion unit.

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

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on July 1, 2002), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - operator training in 60.1645 through 60.1670;

(C) Good combustion practices - operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935; and

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means SWCAA 400-050(5);

(B) "You" in the federal rule means the owner or operator;

(C) "Administrator" includes the permitting agency;

(D) Table 1 in (h)(ii) of this subsection substitutes for Table 1 in the federal rule; and

(E) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must comply with Table 1.

Table 1 Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin on-site construction)	Increment 4 (Complete on-site construction)	Increment 5 (Final compliance)
All Class I units	August 6, 2003	April 6, 2004	October 6, 2004	October 6, 2005	November 6, 2005
All Class II units	September 6, 2003	Not applicable	Not applicable	Not applicable	May 6, 2005



(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 CFR 60.1790 (in effect on July 1, 2002).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, Subpart BBBB (in effect on July 1, 2002) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction permit or operation permit) if a permit modification is required.

(i) Air operating permit. Chapter 173-401 WAC, the air operating permit regulation, applicability begins on July 1, 2002. See WAC 173-401-500 for permit application requirements and deadlines.

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

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

**((SWCAA 400-052 Stack Sampling of Large Combustion Sources**

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

~~((1) **Applicability.** The requirements of this section apply to each "stationary source" which emits 100 tons per year or more of nitrogen oxides, carbon monoxide, particulate matter, sulfur dioxide or volatile organic compounds due to the operation of one or more combustion or incineration units. Individual emission units with a potential to emit of less than 10 tons per year of the qualifying pollutant are exempt from the requirements of this section.~~

~~(2) **Emission testing requirements.** The owner or operator of a "stationary source" subject to this section shall conduct emission testing to quantify emissions of each qualifying pollutant. Unless an alternative schedule has been provided in accordance with subsections (5) or (6) below, emission testing shall be conducted according to the following schedule:~~

~~(a) "Stationary sources" subject to the requirements of this section with more than one combustion or incineration unit shall divide affected combustion or incineration units into test groups. The collective emissions of each test group shall comprise at least 25 percent of the potential emissions of the qualifying pollutant. One test group shall be emission tested at least once every two calendar years. Test groups shall be tested in rotation so that one group is tested during each test period, and each group is tested before any other group is tested twice in the same rotation.~~

~~(b) Regardless of subsection (2)(a), any individual combustion or incineration unit that has the potential to emit~~

~~greater than 100 tons per year of any pollutant listed in subsection (1) shall be emission tested at least once every two calendar years.~~

~~(3) **Sampling methods.** All emission testing shall be conducted in accordance with the requirements of SWCAA 400-106.~~

~~(4) **Additional requirements.** Nothing in this section shall be construed as to limit the ability of the Agency to impose additional or supplemental emission testing requirements for any emission unit within the Agency's jurisdiction in accordance with SWCAA 400-105(2) or 400-106(1)(a).~~

~~(5) **Alternative sampling schedules.** The Agency may accept or require an alternative to the emission testing schedule in subsection (2). Such an alternative emission testing schedule must be specified in writing by the Agency.~~

~~(6) **Continuous emission monitors.** Continuous emission monitors may be utilized as an alternative to the emission testing requirements in subsection (2) provided the monitors are operated and maintained in accordance with the applicable performance specification(s) in 40 CFR Part 60, Appendix B and the quality assurance procedures of 40 CFR Part 60, Appendix F, both as in effect on July 1, 2002.)~~

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

**SWCAA 400-070 ((Emission Standards)) General Requirements for Certain Source Categories**

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

The Agency finds that the reasonable regulation of "stationary sources" within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emission units within the categories listed.

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

(2) **Hog fuel boilers.**

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

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

(3) **Orchard heating.**

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

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

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

(5) **Sulfuric acid plants.** No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H<sub>2</sub>SO<sub>4</sub>, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H<sub>2</sub>SO<sub>4</sub>.

(6) **Gasoline dispensing facilities.**

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

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

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

(7) **Perchloroethylene Dry Cleaners.**

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

~~((a))~~ (b) Applicability.

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

TABLE 1. PCE Dry Cleaner Source Categories

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

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

~~((b))~~ (c) Operations and maintenance record.

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

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

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

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

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

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

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

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

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

(IV) The date the temperature was taken;

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

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

(II) The date the concentration was measured;

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

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

(G) All receipts of PCE purchases; and

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

~~((e))~~ (d) General operations and maintenance requirements(-):

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

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

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

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

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

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

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

TABLE 2. Minimum PCE Vapor Vent Control Requirements

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

~~((e))~~ (e) Inspection.

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

TABLE 3. Minimum Inspection Frequency

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

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

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

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

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

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

~~((f))~~ (f) Repair(-) requirements:

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

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

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

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

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

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

(i) Outlet air temperature(-) requirements:

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

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

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

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

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

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

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

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

(ii) Inlet air temperature(-) requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible.

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

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

**(8) Abrasive blasting.**

(a) Abrasive blasting shall be performed inside a booth or structure designed to capture the blast grit, overspray, and removed material except that outdoor blasting of structures or items too large to be reasonably handled indoors or in an enclosure shall employ control measures such as curtailment during windy periods, wet blasting, and/or enclosure of the area being blasted with tarps.

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

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

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

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

**(10) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

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

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

(c) Standards for MSW landfill emissions(-):

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

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

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

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

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

(e) Test methods and procedures(-):

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

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

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

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

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

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

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

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

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

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

(h) Gas collection and control systems(-);

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

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

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

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

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

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

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

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

(i) Air operating permit(-);

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

(ii) An MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to Chapter 173-401

WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no "source" may operate after the time that it is required to submit a timely and complete application.)

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

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

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

**(11) Used oil burners.**

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

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

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

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

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

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

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

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

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

(i) Arsenic - 5 ppm maximum;

(ii) Cadmium - 2 ppm maximum;

(iii) Chromium - 10 ppm maximum;

(iv) Lead - 100 ppm maximum;

(v) Flash point - 100 °F minimum; and

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

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

**(12) Coffee roasters.**

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

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

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

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

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

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

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

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

(b) On or after January 1, 2010, no person shall offer for sale, or install, a water heater that emits NO<sub>x</sub> at levels in excess of 55 ppmv at 3% O<sub>2</sub>, dry (0.067 lb per million Btu of heat input).

(c) On or after January 1, 2013, no person shall offer for sale, or install, a water heater that emits NO<sub>x</sub> at levels in excess of 20 ppmv at 3% O<sub>2</sub>, dry (0.067 lb per million Btu of heat input).

**(14) Rendering plants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW SECTION**

**SWCAA 400-072 Emission Standards for Selected Small Source Categories**

[Statutory Authority: Chapter 70.94.141 RCW.]

The Agency has established emission standards and operational requirements for selected small source categories. The standards and requirements contained in this section are intended to be representative of BACT for the affected sources. An air discharge permit application for criteria and/or toxic air pollutants pursuant to SWCAA 400-109 is not required for an emission unit that falls within one of the affected source categories, provided the owner or operator submits proper notification to the Agency and maintains compliance with the monitoring, recordkeeping, testing, and reporting requirements specified for the applicable source category. Any emission unit that fails to maintain continuing compliance with applicable requirements becomes subject to SWCAA 400-109.

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

**(1) Exceptions.**

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

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

**(2) Agency notification.** An owner or operator who wishes to install a new emission unit under the provisions of this section must file a formal notification with the Agency for each emission unit. Notification shall be performed using

forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected emission unit, establish applicability under this section, and demonstrate compliance with applicable requirements. Required information includes, but is not limited to, the following:

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);
- (c) Equipment specifications (make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);
- (d) Control equipment specifications;
- (e) Vendor performance guarantees; and
- (f) Operational information (hours of operation, maximum product throughput, fuel consumption, etc.).

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

(4) **Source categories.**

(a) **Coffee roasters.**

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding build-

ings. Any device that obstructs or prevents vertical discharge is prohibited.

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

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

(A) Afterburner operating temperature shall be recorded weekly;

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

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

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

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

(vi) **Reporting requirements.**

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

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

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

(II) Quantity of coffee roasted; and

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

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

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

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

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

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO<sub>x</sub> and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O<sub>2</sub>, dry).

(iii) **General requirements.**

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

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

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

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for

a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

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

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

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

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

(v) **Testing requirements.**

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

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO<sub>x</sub> or 50 ppmvd CO, corrected to 3% O<sub>2</sub>, the owner or operator shall either perform 60 minutes of additional monitoring to more accurately quantify CO and NO<sub>x</sub> emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO<sub>x</sub> or 50 ppmvd CO, corrected to 3% O<sub>2</sub>.

(vi) **Reporting requirements.**

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

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

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

(I) Quantity of fuel consumed; and

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

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

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

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

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

(iii) **General requirements.**

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

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

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

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

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. Total engine operation shall not exceed 200 hours per year.

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

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

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

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

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

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

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

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

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

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

(vi) **Reporting requirements.**

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

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

(I) Hours of engine operation; and

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

(d) **Petroleum dry cleaners.**

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



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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

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

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

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

- (I) Hose connections, unions, couplings and valves;
- (II) Machine door gaskets and seating;
- (III) Filter gaskets and seating;
- (IV) Pumps;
- (V) Solvent tanks and containers;
- (VI) Water separators;
- (VII) Distillation units;
- (VIII) Diverter valves; and
- (IX) Filter housings.

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

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

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results

of any subsequent investigation or corrective action shall be recorded for each occurrence.

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

(vi) **Reporting requirements.**

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

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

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

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

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

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens installed as part of a previously permitted rock crushing operation.

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

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

(iii) **General requirements.**

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

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

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

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

(E) For portable rock crushing operations, the owner or operator shall notify all property owners immediately adjacent to a new job site a minimum of 10 business days in advance of the intended relocation. Such written notification shall include a complete description of the proposed operation, the emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and contact information for the Agency. Response from adjacent landowners shall be directed to the Agency. Authorized operations are dependent on the receipt of public response regarding the proposed relocation.

(F) For portable rock crushing operations, the owner or operator shall notify the Agency at least 10 business days in

advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

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

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

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

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

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

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

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

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the requirements of 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants."

(vi) **Reporting requirements.**

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

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

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

(II) Air emissions of criteria air pollutants.

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

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

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

**SWCAA 400-074 Gasoline Transport Tanker(s) Registration**

[Statutory Authority: Chapter 70.94.141 RCW; refer to WAC 173-491-040. Original adoption 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-055 filed 2/15/01, effective 3/18/01]

(1) Each owner(s) and/or operator(s) of a gasoline transport tank doing business within ~~((the designated ozone non-attainment area or ozone maintenance plan area of))~~ SWCAA jurisdiction shall register the transport tank with SWCAA prior to being placed into service. Such registration shall be made annually with SWCAA.

(2) Each registered gasoline transport tanker shall pay an annual registration fee in accordance with the schedule provided in SWCAA 400-100 (3)(a)((+)). Each transport tanker shall have its own registration sticker, certification test and shall be assessed a separate registration fee.

(3) Prior to registration, SWCAA shall review the leak test certification documentation from the testing company required under SWCAA 490-202(3). Upon demonstration of a successful leak test and payment of registration fees, SWCAA shall issue a registration sticker that shall be applied to the tanker.

(4) The owner(s) and/or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid SWCAA registration sticker is displayed on the tank(s).

(5) Each owner(s) and/or operator(s) of a petroleum product transport tank doing business within SWCAA jurisdiction shall notify SWCAA of a change in status of a tanker. Change in status shall include sale, operating only out of SWCAA jurisdiction, out of service, or other similar change. Such notification shall be made in writing to SWCAA within 10 days of the change of status.

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

**AMENDATORY SECTION** (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

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

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 12/16/86; 93-21-003 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-098 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) The national emission standards for hazardous air pollutants promulgated by EPA as in effect ~~((July 1, 2006))~~ January 1, 2009, as contained in 40 CFR Part 61, are adopted by reference. The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency. A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

(2) The Agency may require that emission tests be conducted and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Part 61, Part 63, or Part 65 in order to determine the status of compliance of

sources of these contaminants and to carry out its enforcement responsibilities.

(3) Emission testing, monitoring, and analytical methods for sources of hazardous air pollutants shall conform with the requirements of 40 CFR Part 61, Part 63 and/or Part 65, as in effect on ((July 1, 2006)) January 1, 2009.

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

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

(a) As of ((July 1, 2006)) January 1, 2009, 40 CFR Part 63 and appendices are hereby adopted by reference. ((The following)) A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes((;)).

~~((Subpart A National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions (ref. 40 CFR 63.1 et seq.)~~

~~Subpart B National Emission Standards for Hazardous Air Pollutants for Source Categories: Equivalent Emission Limitation By Permit (ref. 40 CFR 63.50 et seq.)~~

~~Subpart D National Emission Standards for Hazardous Air Pollutants for Source Categories: Early Reduction Program (ref. 40 CFR 63.70 et seq.)~~

~~Subpart F National Emission Standards for Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)~~

~~Subpart G National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)~~

~~Subpart H National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)~~

~~Subpart I National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)~~

~~Subpart J National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)~~

~~Subpart L National Emission Standards for Hazardous Air Pollutants for Coke Oven Operations (ref. 40 CFR 63.300 et seq.)~~

~~Subpart M National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities—as it applies to major sources (ref. 40 CFR 63.320 et seq.)~~

~~Subpart N National Emission Standards for Hazardous Air Pollutants from Hard and Decorative Electroplating and Anodizing Operations (ref. 40 CFR 63.340 et seq.)~~

~~Subpart O National Ethylene Oxide Air Emission Standards for Commercial Sterilizers (ref. 40 CFR 63.360 et seq.)~~

~~Subpart Q National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)~~

~~Subpart R National Emission Standards for Hazardous Air Pollutants for Gasoline Distribution Operations (Stage I) (ref. 40 CFR 63.420 et seq.)~~

~~Subpart S National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)~~

~~Subpart T National Emission Standards for Hazardous Air Pollutants for Halogenated Solvents Cleaning Operations (ref. 40 CFR 63.460 et seq.)~~

~~Subpart U National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins (ref. 40 CFR 63.480 et seq.)~~

~~Subpart W National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)~~

~~Subpart X National Emission Standards for Hazardous Air Pollutants for Secondary Lead Smelting Manufacturing Operations (ref. 40 CFR 63.541 et seq.)~~

~~Subpart Y National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)~~

~~Subpart AA National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)~~

~~Subpart BB National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)~~

~~Subpart CC National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries (ref. 40 CFR 63.640 et seq.)~~

~~Subpart DD National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)~~

~~Subpart EE National Emission Standards for Hazardous Air Pollutants for Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.710 et seq.)~~

~~Subpart GG National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing Operations (ref. 40 CFR 63.740 et seq.)~~

~~Subpart HH National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)~~

~~Subpart II National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)~~

~~Subpart JJ National Emission Standards for Hazardous Air Pollutants for Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)~~

~~Subpart KK National Emission Standards for Hazardous Air Pollutants for the Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)~~

~~Subpart LL National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)~~

~~Subpart MM National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)~~

~~Subpart OO National Emission Standards for Tanks—Level I (ref. 40 CFR 63.900 et seq.)~~

Subpart PP National Emission Standards for Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ National Emission Standards for Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR National Emission Standards for Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS National Emission Standards for Hazardous Air Pollutants for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)

Subpart TT National Emission Standards for Hazardous Air Pollutants for Equipment Leaks—Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU National Emission Standards for Hazardous Air Pollutants for Equipment Leaks—Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV National Emission Standards for Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW National Emission Standards for Hazardous Air Pollutants for Storage Vessels (Tanks)—Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT (ref. 40 CFR 63.1100 et seq.)

Subpart CCC National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors (ref. 40 CFR 63.1211 et seq.)

Subpart GGG National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ National Emission Standards for Hazardous Air Pollutants Emissions: Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO National Emission Standards for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT National Emission Standards for Hazardous Air Pollutants for Primary Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV National Emission Standards for Hazardous Air Pollutants for Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC National Emission Standards for Hazardous Air Pollutants for Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

~~Subpart NNNN National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)~~

~~Subpart OOOO National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)~~

~~Subpart PPPP National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)~~

~~Subpart QQQQ National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)~~

~~Subpart RRRR National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)~~

~~Subpart SSSS National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)~~

~~Subpart TTTT National Emission Standards for Hazardous Air Pollutants for Leather Tanning and Finishing Operations (ref. 40 CFR 63.5280 et seq.)~~

~~Subpart UUUU National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)~~

~~Subpart VVVV National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)~~

~~Subpart WWWW National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)~~

~~Subpart XXXX National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)~~

~~Subpart YYYY National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)~~

~~Subpart ZZZZ National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.)~~

~~Subpart AAAAA National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)~~

~~Subpart BBBBBB National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)~~

~~Subpart CCCCC National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)~~

~~Subpart DDDDD National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)~~

~~Subpart EEEEE National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)~~

~~Subpart FFFFF National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)~~

~~Subpart GGGGG National Emission Standards for Hazardous Air Pollutants: Site Remediation (ref. 40 CFR 63.7880 et seq.)~~

~~Subpart HHHHH National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)~~

~~Subpart IIII National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)~~

~~Subpart JJJJ National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)~~

~~Subpart KKKKK National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)~~

~~Subpart LLLLL National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)~~

~~Subpart MMMMM National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)~~

~~Subpart NNNNN National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)~~

~~Subpart PPPPP National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)~~

~~Subpart QQQQQ National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)~~

~~Subpart RRRRR National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)~~

~~Subpart SSSSS National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)~~

~~Subpart TTTTT National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)~~

~~Appendix A Test Methods (ref. 40 CFR 63, Appendix A)~~

~~Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)~~

~~Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)~~

~~Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)~~

~~Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E))~~

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

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

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

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

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

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

(D) Subpart ZZZZ, Stationary Reciprocating Internal Combustion Engines;

(E) Subpart HHHHHH, Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and

(F) Subpart XXXXXX, Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

(6) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** (SOCMI) 40 CFR Part 65, as in effect on ~~((July 1, 2006))~~ January 1, 2009, is adopted by reference.

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

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

**SWCAA 400-100 Registration Requirements**

[Statutory Authority: Chapter 70.94.141 RCW, 70.94.151 RCW, 70.94.200 RCW, and 70.94.395 RCW. Original Board adoption 10/29/69 (Regulation 2 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-04-030 filed 1/28/92, effective 2/28/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-032 filed 3/10/99, effective 4/11/99; 01-05-055 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05]

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

(1) **Applicability.** All "sources" or emission units shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151 except the following:

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

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

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

**(2) General requirements.**

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

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

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

<i>Emission Unit Fee</i>	<i>Pollution Emission Fee</i>	<i>Effective Date</i>
<del>(( \$75 per emission unit</del>	<del>\$39/ton of criteria pollutant emission, \$10/ton of toxic air pollutant emission</del>	<del>July 1, 1999</del>
<del>\$80 per emission unit</del>	<del>\$41/ton of criteria pollutant emission, \$15/ton of toxic air pollutant emission</del>	<del>January 1, 2006</del>
<del>\$85 per emission unit</del>	<del>\$43/ton of criteria pollutant emission, \$20/ton of toxic air pollutant emission</del>	<del>January 1, 2007</del>
\$90 per emission unit	\$45/ton of criteria pollutant emission, \$25/ton of toxic air pollutant emission	January 1, 2008

Exceptions:

(a) An annual registration fee of \$50.00 shall be charged to each gasoline transport tank.

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

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. ~~((Air discharge permits and Orders of Approval for)) Pursuant to RCW 70.94.431(7), "sources" with delinquent registration fees may be ((invalidated by the Control Officer. The Agency shall notify the owner or operator of a "source" by certified letter prior to taking action to invalidate affected air discharge permits and Orders of Approval. Notification shall be provided in such a manner as to allow the delinquency to be remedied prior to invalidation-)) subject to a penalty equal to three times the amount of the original fee owed.~~

(5) **Reporting requirements for transfer or permanent shutdown of registered "sources."**

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

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected emission units; and
- (iv) Name and telephone number of the registered owner's or operator's authorized representative.

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

- (i) Legal name of the company or individual involved in the transfer;
- (ii) Effective date of the transfer;
- (iii) Description of the affected emission units; and
- (iv) Name and telephone number of the owner's or operator's authorized representative.

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

(6) **Inspections.**

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

**SWCAA 400-101 Emission Units Exempt from Registration Requirements**

[Statutory Authority: Chapters 70.94.141 RCW, 70.94.163 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 3.03); Amended by Board 12/18/79 (400-100(3)); Amended by Board 12/18/79; Amended by Board 4/17/84; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073, filed 11/13/06, effective 12/14/06]

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

~~((b) Any emission unit exempted from registration under this section shall also be considered exempt from the requirements of SWCAA 400-046, 400-110, 400-111, 400-112, 400-113 and 400-114, except as provided in SWCAA 400-110(2)(b).))~~ An exemption from new source review pursuant to SWCAA 400-109 shall not be construed as an exemption from registration under this section.

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

(3) **Exempt emission thresholds.** ~~((An exemption for an entire))~~ A "stationary source" shall be ((valid only)) exempt from registration if the ((emissions)) uncontrolled potential to emit from all emission units at that site or facility are less than all of the applicable ((exemption)) emission thresholds listed below. ((Whenever a "stationary source" exemption is determined by the quantity of annual emissions (tons per year), an emission unit's uncontrolled potential to emit shall be used as the basis for exemption.)) To qualify for an emission threshold exemption, the owner or operator shall submit to the Agency a summary of all activities/equipment that emit air pollutants, and calculate potential emissions from the facility based on maximum levels of production/operation. The Agency shall review and validate the submitted documentation prior to granting an exemption.

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

(4) ~~((List of))~~ **Exempt equipment and activities(~~(:))~~**.

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

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

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

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

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

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

~~((g) Food preparation facilities, establishments or equipment (e.g., restaurants).))~~

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

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

~~((j))~~ (i) Sewing equipment.

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

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

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

~~((n))~~ (m) Office equipment, operations and supplies.

~~((o))~~ (n) Internal combustion (~~equipment including diesel~~) engines used for ~~((standby))~~ emergency (~~(power generation))~~ service with a maximum aggregate power rating less than 200 horsepower.

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

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

~~((r))~~ (q) Housekeeping activities and equipment.

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

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

~~((u))~~ (t) Personal care activities.

~~((v))~~ (u) Lawn and landscaping activities.

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

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

~~((y))~~ (x) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

**SWCAA 400-105 Records, Monitoring and Reporting**

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 12/18/79; Amended by Board 4/17/84 - renumbered to 400-170; Amended by Board (400-170) 12/16/86; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

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

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

(a) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission



submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Large "sources." At a minimum, "sources" satisfying the criteria of 40 CFR 51, Subpart Q will be submitted to EPA by the Agency for inclusion in the national emission database. The "sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. Upon written request, an extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

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

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" (~~that~~) with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO<sub>x</sub> are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO<sub>x</sub> and VOCs for ozone season in preparation for the SIP update.

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

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

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

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

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

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

(a) Fossil fuel-fired steam generators((-));

(i) Opacity, except where:

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

(B) Only gaseous fuel is burned.

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

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

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

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

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

(d) Wood residue fuel-fired steam generators((-);

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

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

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on (~~July 1, 2002~~) January 1, 2009), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

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

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

(i) Subject to a New Source Performance Standard (NSPS). NSPS "stationary sources" shall be governed by SWCAA 400-115.

(ii) Not subject to an applicable emission standard.

(h) Monitoring system malfunctions. A "source" may be temporarily exempted from the monitoring and reporting

requirements of this section during periods of monitoring system malfunctions provided that the owner(s) or operator(s) shows to the satisfaction of the Agency that the malfunction was unavoidable and is being repaired as expeditiously as practicable as provided under SWCAA 400-107.

(5) **Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program.** Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWCAA 400-105(1) shall require the submittal of sufficient information to the Agency to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Agency may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.

(6) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(7) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

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

AMENDATORY SECTION (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

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

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption - 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

#### **(1) Emission testing requirements.**

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or emission unit within the jurisdiction of the Agency to determine compliance, evaluate control equipment performance, evaluate RACT or quantify emissions.

(b) **Test methods.** Any required emission testing shall be performed using appropriate sampling and analytical methods as approved in advance by the Agency including, but not limited to, approved EPA test methods from 40 CFR Parts 51, 60, 61, and 63 which are hereby adopted by reference (as in effect on ~~(July 1, 2002))~~ January 1, 2009), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

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

(d) **Notification/test plan submission.** The owner or operator of a "source" shall submit a test plan to the Agency in writing at least ~~((2 weeks-))~~ 10 business days~~((+))~~ prior to any required emissions test or as otherwise approved by the Agency. Agency personnel shall be informed at least ~~((three))~~ 3 business days prior to testing so that they have an opportunity to be present during testing.

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

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

(g) **Test reports.** Results of all required emission testing shall be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable ~~((regulatory order))~~ air discharge permit. Test reports shall be submitted in both printed and electronic formats. Measured concentrations for combustion and incineration emission units shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The report shall include the following information:

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

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

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

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

(v) A summary of production related parameters;

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

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

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

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

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

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

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

(b) **Monitoring method.** Emission monitoring ~~(shall)~~ may be performed with a portable analyzer or EPA reference methods. Alternative methodologies ~~(may)~~ must be preapproved by SWCAA.

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

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

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

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

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

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

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

~~((+))~~ (ii) Time and date of the emission monitoring;

~~((+))~~ (iii) Identification of the personnel involved;

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

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

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

~~((+))~~ (vii) Calibration error check documentation.

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

**AMENDATORY SECTION** (Amending WSR 03-21-045, filed 10/9/03, effective 11/09/03)

**SWCAA 400-107 Excess Emissions**

[Statutory Authority: Chapters 70.94.141 RCW, 70.94.431 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 4.07 & 4.08); Amended by Board 10/29/69 (Regulation 2 Sec 5.07); 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Recordkeeping and reporting.** Excess emissions shall be reported to SWCAA as follows:

(a) Emissions that represent a potential threat to human health or safety ~~((, or))~~ shall be reported as soon as possible, but no later than 12 hours after discovery.

(b) Emissions which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery.

(c) All other excess emissions shall be reported within ~~((thirty))~~ 30 calendar days after the end of the month during which the event is discovered.

(d) Excess emission reports shall contain the following information:

~~((+))~~ (i) Identification of the emission unit(s) involved;

~~((+))~~ (ii) A brief description of the event;

~~((+))~~ (iii) Duration of the event; and

~~((+))~~ (iv) Anticipated corrective action to prevent or minimize excess emissions, if any.

Upon request by the Agency, the owner(s) or operator(s) of the "source" shall submit a full written report describing the known causes, the corrective actions taken, and the preventive measures implemented to minimize or eliminate the chance of recurrence.

(2) **Penalty exclusion for unavoidable excess emissions.**

(a) The owner or operator of a "source" shall have the burden of proving to the Agency or the Pollution Control Hearings Board in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under this section.

(b) Excess emissions determined by the Agency to be unavoidable under the procedures and criteria in this section shall be excused from penalty.

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

(d) Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under subsection (1) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(e) Excess emissions due to upsets shall be considered unavoidable provided the "source" reports as required under subsection (1) of this section and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iii) The operator took immediate and appropriate corrective action in a manner consistent with good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; and

(iv) The owner's or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

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

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

### SWCAA 400-109 Air Discharge Permit Applications

[Statutory Authority: Chapter 70.94.141 RCW and 70.94.152 RCW. Original Board adoption 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-027 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05]

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

#### (2) **Applicability.**

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued

or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

(i) New construction or installation;

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

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

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

(v) Relocation of existing equipment;

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

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

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

(c) "Stationary sources" subject to the PSD program (WAC 173-400-((+4+)) 700 through 750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit a permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected emission units and quantify potential emissions, and the payment of a fee equal to \$300. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate of \$70/hr. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified (~~SWCAA 400-101~~) below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

((+)) Name and location of "stationary source";

((+)) Description of primary processes at the "stationary source";

((+)) Description of emission units at the "stationary source"; and

((+)) Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not

begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified (~~in SWCAA 400-101~~) below, an air discharge permit application shall be submitted pursuant to this section.

(a) Sources subject to SWCAA 400-072. A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and proper notification has been submitted to SWCAA prior to installation or operation.

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

<i>Pollutant</i>	<i>Exemption Threshold</i>
Criteria pollutants (other than PM <sub>2.5</sub> )	1.0 tpy (individual pollutant)
PM <sub>2.5</sub>	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	1.0 tpy (combined) or below individual SQER per Chapter 173-460 WAC, whichever is less.

(c) Exempt equipment and activities.

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

(A) Relocation of portable equipment that has an active air discharge permit from SWCAA allowing portable operation.

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

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

(D) Emergency service internal combustion engines manufactured after January 1, 2008 and individually rated at less than 200 horsepower. This exemption does not apply if the aggregate power rating of all internal combustion engines at the affected facility is greater than 500 horsepower.

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

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

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

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

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

(J) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to

manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment).

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

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

(M) Sewing equipment.

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

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

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

(Q) Office equipment, operations and supplies.

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

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

(T) Housekeeping activities and equipment.

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

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

(W) Personal care activities.

(X) Lawn and landscaping activities.

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

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

(AA) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines.

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours.

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

~~((3))~~ (4) Fees. Before the Agency may review a permit application, the applicant shall submit all applicable fees as detailed in the following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee/Table A + Additional Review Fee/Table B (if applicable) + Major NSR Review Fee/Table C (if applicable)]

**Filing Fee**

A filing fee of \$500.00 shall be submitted for each permit application.

**Legal Notice Fee**

An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal Notice ((to the general public through publication in the newspaper has the option of either paying a flat fee of \$160.00 at the time of submittal or being invoiced later. If the applicant chooses to be invoiced later, the total fee)) pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus ((a \$100.00 fee)) \$70 to compensate for the staff time required to prepare, mail and invoice ((~~for~~)) the public notice.

**Permit Application Review Fee**

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

**Expedited Application Review**

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent on the accuracy/completeness of the application and the responsiveness of the applicant.

**Additional/Major NSR Review Fees**

If additional types of review, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay ((the applicable)) an additional review fee as specified in those Tables. The review fees identified in Tables B and C are cumulative.

**TABLE A  
Permit Application Review Fees**

	<b>Equipment/Activity</b>	<b>Associated Work Hours</b>	<b>Review Fee</b>
i.	Fuel burning equipment (Million Btu/hr heat input @ design capacity):		

	<b>Equipment/Activity</b>	<b>Associated Work Hours</b>	<b>Review Fee</b>
	0.4 or more but less than 5	8	\$ 600.00
	5 or more but less than 10	10	700.00
	10 or more but less than 30	12	850.00
	30 or more but less than 50	14	1,000.00
	50 or more but less than 100	17	1,200.00
	100 or more but less than 250	35	2,500.00
	250 or more but less than 500	57	4,000.00
	500 or more	85	6,000.00
	Change in fuel type	One half of the applicable fee listed above	
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM):		
	Less than 50	8	\$ 600.00
	50 or more but less than 5,000	10	700.00
	5,000 or more but less than 20,000	11	800.00
	20,000 or more but less than 50,000	12	900.00
	50,000 or more but less than 100,000	13	950.00
	100,000 or more but less than 250,000	14	1,000.00
	250,000 or more but less than 500,000	28	2,000.00
	500,000 or more	57	4,000.00
iii.	Refuse burning equipment (Incinerators) (Tons/day capacity):		
	Less than 0.5	10	\$700.00
	0.5 or more but less than 5	11	800.00
	5 or more but less than 12	14	1,000.00
	12 or more but less than 50	42	3,000.00
	50 or more	85	6,000.00
iv.	Storage tanks, reservoirs, or containers (Gallons-total capacity): (Other than gasoline or diesel fuel dispensing facilities):		
	250 or more but less than 10,000	8	\$ 600.00
	10,000 or more but less than 40,000	14	1,000.00
	40,000 or more but less than 100,000	21	1,500.00
	100,000 or more	28	2,000.00
v.	Gasoline dispensing facilities:		
	Stage I	8	\$ 600.00
	Stage II	10	700.00
	Stages I & II, combined	11	800.00
	Toxics review for gasoline facility	21	1,500.00
	Stage II removal	8	600.00
vi.	Other: (Not classified in Subsection i., ii., iii., iv. or v. above)		\$200.00 per ton of emission
vii.	Toxic air contaminants		\$200.00 per ton of emission
viii.	Complex stationary source or modification:	85	\$ 6,000.00
ix.	Synthetic minor application: (Including, but not limited to: Title V, HAP)	35	\$ 2,500.00

	Equipment/Activity	Associated Work Hours	Review Fee
x.	Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):		
	Less than or equal to 10	8	\$ 600.00
	More than 10 but less than or equal to 50	14	1,000.00
	More than 50 but less than or equal to 100	21	1,500.00
	More than 100 but less than 250	35	2,500.00
	250 or greater	85	6,000.00
xi.	Minor modifications to existing permit conditions:	8	\$ 600.00
xii.	<del>(Temporary, substitute, or emergency sources)</del>		
	<del>(Small)</del>	<del>14</del>	<del>\$ 800.00)</del>
	<del>(Large)</del>	<del>24</del>	<del>1,500.00)</del>
<del>(xiii.)</del>	Dry cleaner	8	\$ 600.00
<del>(xiv.)</del>	<del>(Diesel engine generators/pumps)</del> Internal combustion engines (Aggregate horsepower rating):		
<del>xiii.</del>	<del>(Less than 100</del>	<del>8</del>	<del>\$ 600.00)</del>
	<del>(100 or more but)</del> Less than 500	10	700.00
	500 or more but less than 2,000	14	1,000.00
	2,000 or more but less than 5,000	21	1,500.00
	5,000 or more but less than 10,000	42	3,000.00
	10,000 or more	85	6,000.00
<del>(xv.)</del>	Crematory/small incinerators/small flares:	10	\$ 700.00
<del>xiv.</del>	Gluing/flow coating operations without active ventilation:	11	\$800.00
<del>xv.</del>	Soil/ <u>groundwater</u> remediation:	11	\$ 800.00
<del>xvi.</del>	Composting facilities (Average material throughput - tons per day):		
<del>xvii.)</del>	Less than 50	8	\$ 600.00
	50 or more but less than 100	14	1,000.00
	100 or more but less than 200	21	1,500.00
	200 or more but less than 500	42	3,000.00
	500 or more	85	6,000.00
<del>(xix.)</del>	Coffee roasters:	10	\$ 700.00
<del>xviii.</del>			
<del>(xx.)</del>	<del>(Emergency application: Double normal application and review fee)</del> Municipal wastewater treatment plants: (Million gallons per day - annual average design capacity.)		
<del>xix.</del>	More than 1 but less than 5	11	\$ 800.00
	5 or more but less than 10	21	1,500.00
	10 or more	35	2,500.00

**TABLE B  
Additional Review Fees**

	Equipment/Activity	Associated Work Hours	Review Fee
<del>(xxi.)</del>	Emission offset analysis or bubble:	10	\$ 700.00
<del>xx.</del>			
<del>(xxii.)</del>	Emission reduction credit (ERC) application: (Deposit or withdrawal)	10	\$ 700.00
<del>xxi.</del>			

<del>(xxiii.)</del>	State environmental policy act (SEPA) - lead agency:		
<del>xxii.</del>		Minor	14
		Major	35
			\$ 1,000.00
			2,500.00
<del>(xxiv.)</del>	Environmental impact statement (EIS) review:		
<del>xxiii.</del>		Minor	11
		Major	28
			\$ 800.00
			2,000.00
<del>(xxv.)</del>	RACT/BACT/MACT/BART/LAER determination:		\$ 70.00/hr
<del>xxiv.</del>			
<del>(xxvi.)</del>	Variance request:	11	\$ 800.00
<del>xxv.</del>			
<del>(xxvii.)</del>	Review of ambient impact analysis:		\$ 70.00/hr.
<del>xxvi.</del>			
<del>(xxviii.)</del>	Review of projects under RCW-70.105D.090:		\$ 70.00/hr)
<del>(xxix.)</del>	Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		\$ 70.00/hr
<del>xxvii.</del>			

**TABLE C  
Major NSR Review Fees**

	Equipment/Activity	Associated Work Hours	Review Fee
<del>(xxx.)</del>	Plantwide applicability limitations:	142	\$ 10,000.00
<del>xxviii.</del>			
<del>(xxxi.)</del>	Clean unit/pollution control project designations:	74	\$ 5,000.00)

~~((4))~~ (5) **Agency actions.** Each complete air discharge permit application shall result in the issuance of an air discharge permit or other applicable order or confirmation of exempt status by the Agency. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Demonstration of completion of an environmental checklist as provided in WAC 197-11 shall be submitted with each air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit a copy of that agency's SEPA determination. Issuance of air discharge permits or regulatory orders for all air discharge permit applications shall be consistent with the requirements of SWCAA 400-110.

~~((5))~~ (6) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA ~~((400-100 and))~~ 400-110 if it meets the exemption criteria provided in SWCAA 400-~~((101))~~ 109(3). The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and

actual construction of the "new source" shall not begin prior to that time.

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

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

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

**SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)**

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.152 RCW. Original Board adoption 12/17/68 (Regulation 1 Sec 3); Amended by Board 12/18/79; Amended by Board 8/18/81; Amended by Board 3/20/84; 92-06-015 filed 2/25/92, effective 3/25/92; 93-21-004 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-030 filed 3/10/99, effective 4/11/99; 01-05-056 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

**(1) Applicability.**

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 shall be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification shall be limited to the emission unit(s) proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113 and/or WAC 173-400-~~((144))~~720.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-~~((104))~~109(3). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section; and

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC, not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-~~((080))~~150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate specified in WAC 173-460-~~((080))~~150. The material change may not cause an existing emission limit to be exceeded.

**(2) Requirements.**

(a) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to con-

struction of any "new source," new emission unit, or modification.

(b) Regardless of any other provision of this section(~~(, 400-101))~~ or 400-109, all review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any of the following:

~~((i) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Part AAA, Wood stoves (as in effect on July 1, 2002);~~

~~((ii) Any project that qualifies as a new or modified "stationary source" within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants as in effect on July 1, 2002), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;~~

~~((iii) Any project that qualifies as a "new source" within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories as in effect on July 1, 2002);~~)

~~((iv))~~ (i) Any project that qualifies as a new major stationary source, or a major modification; or

~~((v))~~ (ii) Any modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS(~~(, ambient air increments)~~) and ambient air quality standards (See Table A below). A completed (~~(environmental)~~) SEPA checklist or (~~(a completed)~~) determination, as provided in Chapter 197-11 WAC, shall be submitted with each application. Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. ~~((If the ambient impact of a proposed project (i.e., changes in ambient concentrations resulting from the proposed project or modification alone) is predicted to be less than the applicable ambient air increments, the air quality analysis is complete at that point.))~~ If the ambient impact of a proposed project could potentially exceed ~~((the))~~ an applicable ambient air increment(~~(s))~~, the Agency may require that the applicant (~~(shall))~~ demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on ~~((July 1, 2002))~~ January 1, 2009). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.



TABLE A - Emission Concentration Regulatory Standards

Pollutant	Averaging Period	Ambient Air Increment 40 CFR 51.166(c)		National Ambient Air Quality Standards (NAAQS) 40 CFR 50		State Ambient Air Quality Standards 173-470, 474, and 475 WAC
		Class I µg/m <sup>3</sup>	Class II µg/m <sup>3</sup>	Primary Standard µg/m <sup>3</sup> (ppm)	Secondary Standard µg/m <sup>3</sup> (ppm)	Ambient Standard µg/m <sup>3</sup> (ppm)
Carbon Monoxide (CO)	8-Hour	—	—	10,000 <sup>b</sup> (9.0)	—	10,000 <sup>b</sup> (9.0)
	1-Hour	—	—	40,000 <sup>b</sup> (35.0)	—	40,000 <sup>b</sup> (35.0)
Nitrogen Dioxide (NO <sub>2</sub> )	Annual <sup>a</sup> (arithmetic mean)	2.5	25	100(0.05)	100(0.05)	100(0.05)
Ozone (O <sub>3</sub> )	1-Hour <sup>c</sup>	—	—	(0.12)	(0.12)	(0.12)
	8-Hour <sup>f</sup>	—	—	<del>((0.08))</del> (0.075)	<del>((0.08))</del> (0.075)	—
Sulfur Dioxide (SO <sub>2</sub> )	Annual <sup>a</sup>	2	20	80(0.03)	—	53(0.02)
	24-Hour	5	91	365 <sup>b</sup> (0.14)	—	260 <sup>b</sup> (0.10)
	3-Hour	25	512	—	1,300 <sup>b</sup> (0.50)	—
	1-Hour	—	—	—	—	1,065 <sup>b</sup> (0.40) <sup>d</sup>
Lead	Quarterly Average	—	—	1.5	1.5	1.5
<del>((Total Suspended Particulates (TSP)))</del>	<del>((Annual<sup>a</sup> (geometric mean)))</del>	—	—	—	—	<del>((60))</del>
	<del>((24-Hour))</del>	—	—	—	—	<del>((150<sup>b</sup>))</del>
Particulate Matter less than 10 µm (PM <sub>10</sub> )	Annual (arithmetic mean)	4	17	<del>((50))</del>	<del>((50))</del>	50
	24-Hour <sup>i</sup>	8	30	150 <sup>b</sup>	150 <sup>b</sup>	150 <sup>b</sup>
Particulate Matter less than 2.5 µm (PM <sub>2.5</sub> )	Annual <sup>g</sup> (arithmetic mean)	—	—	15	15	—
	24-Hour <sup>h</sup>	—	—	<del>((65))</del> 35	<del>((65))</del> 35	—

µg/m<sup>3</sup> = micrograms per cubic meter; ppm= parts per million

<sup>a</sup> Never to be exceeded.

<sup>b</sup> Not to be exceeded more than once per year.

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

<sup>d</sup> Also, 0.25 ppm not to be exceeded more than twice in seven days.

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

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

<sup>g</sup> Based on the 3-year average of annual arithmetic mean PM<sub>2.5</sub> concentrations.

<sup>h</sup> Based on the 3-year average of the 98th percentile of 24-hour PM<sub>2.5</sub> concentrations at each monitor within an area.

<sup>i</sup> Based on the 99th percentile of 24-hour PM<sub>10</sub> concentrations at each monitor.

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

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" shall demonstrate that all applicable requirements of SWCAA 400-141 and WAC 173-400-~~((44))~~ 700 through 750 have been met.

(e) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager.

**(3) Application completeness determination.** Within ~~((thirty (30)))~~ 30 calendar days of receipt of an air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application as provided under RCW 70.94.152.

(a) For an application subject to PSD review under WAC 173-400-~~((44))~~ 700, a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(b) For an application subject to Special Protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

**(4) Final determination.**

(a) Within ~~((sixty (60)))~~ 60 calendar days of receipt of a complete application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the application required by this section. An application designated for integrated review shall be processed in accordance with Chapter 173-401 WAC procedures and deadlines. A PSD permit application under WAC 173-400-~~((44))~~ 700 or an air discharge permit application for a "major modification" or a "major stationary source" in a nonattainment area must also comply with SWCAA 400-171 and WAC 173-400-171, as applicable. An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

(c) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

~~((e))~~ (d) If the "new source" is a "major stationary source" or the proposed modification is a "major modification," the Agency shall submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

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

(6) **Portable equipment.** The owner(s) or operator(s) of "portable equipment," as defined in SWCAA 400-030, shall be allowed to operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected emission units are registered with the Agency.

(b) The affected emission units have an air discharge permit as a portable "stationary source."

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location at least ~~((ten))~~ 10 business days prior to starting the operation.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(e) Landowners and residents of immediately adjacent properties are notified by the owner(s) or operator(s) of the "portable equipment" in writing at least 10 business days prior to commencement of operations at the proposed location. Copies of the notification letters shall be mailed to the Agency. Written notification to the adjacent landowners and residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and the address and phone number for SWCAA. Written notification shall indicate that all comments shall be directed to the Agency.

"Portable equipment" that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be considered to be permanently shutdown and will be removed from active registration. Any "portable equipment" removed from active registration shall be required to submit a new permit application and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

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

(8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not

commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. ~~((The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. An extension for a PSD permit must be approved by Ecology, and comply with the public notice requirements in WAC 173-400-171.))~~ This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. To obtain an extension the permittee must submit a written request to the Agency at least 60 calendar days prior to permit expiration. The request shall clearly identify the justification for an extension and include relevant supporting information. The Agency will review all submitted information, and then approve or deny the request in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency shall provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology, and comply with the public notice requirements in WAC 173-400-171.

**(9) Change of conditions.**

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause ~~((the))~~ an applicable emissions limit or standard to be exceeded;

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

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

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112 and 400-113, as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

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

(d) A request to change approval/permit conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of

this section. The fee schedule found in SWCAA 400-109(3) shall apply to these requests.

**(10) Reopening for cause.** The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

(a) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.~~((or))~~

(b) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

(c) The permit does not meet minimum federal standards.

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

**SWCAA 400-115 Standards of Performance for New Sources**

[Statutory Authority: Chapter 70.94.141 RCW. Originally adopted by Board 12/18/79; Amended by Board 4/17/84 (renumbered to 400-135); Amended by Board 12/16/86; 93-16-007 filed 7/22/93, effective 8/22/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-099 filed 10/21/96, effective 11/21/96; 99-07-028 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 05-23-066 filed 11/15/05, effective 12/16/05; 06-23-073, filed 11/13/06, effective 12/14/06]

**(1) Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices as in effect on ~~((July 1, 2006))~~ January 1, 2009 are adopted by reference. The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). ~~((The following list of affected subparts))~~ A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.~~((;))~~

~~((Subpart A - General provisions (ref. 40 CFR 60.1 et seq.))~~

~~Subpart D - Fossil fuel-fired steam generators for which construction is commenced after August 17, 1971, and prior to September 19, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40 et seq.)~~

~~Subpart Da - Electric utility steam generating units for which construction commenced after September 18, 1978, which have a heat input greater than 73 megawatts but not greater than 250 megawatts (ref. 40 CFR 60.40a et seq.)~~

~~Subpart Db - Industrial-commercial-institutional steam generating units for which construction commenced after June 19, 1984, and prior to June 19, 1986, which have a heat input greater than 29 megawatts but less than 73 megawatts (ref. 40 CFR 60.40b et seq.)~~

~~Subpart De - Small industrial-commercial-institutional steam generating units (ref. 40 CFR 60.40c et seq.)~~

~~Subpart E - Incinerators (ref. 40 CFR 60.50 et seq.)~~

Subpart Ea Municipal waste combustors for which construction commenced after December 20, 1989 and on or before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal waste combustors for which construction is commenced after September 20, 1994 or for which Modification of reconstruction is commenced after June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (ref. 40 CFR 60.50c et seq.)

Subpart F Portland cement plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric acid plants (ref. 40 CFR 60.70 et seq.)

Subpart H Sulfuric acid plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix asphalt facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum refineries which produce less than 25,000 barrels per day of refined products (ref. 40 CFR 60.100 et seq.)

Subpart K Storage vessels for petroleum liquid constructed after June 11, 1973, and prior to May 19, 1978, which have a capacity greater than 40,000 gallons (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage vessels for petroleum liquids for which construction, reconstruction or modification commenced after May 18, 1978, and prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile organic liquid storage vessels (including petroleum liquid storage vessels) constructed, reconstructed, or modified after July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary lead smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Brass and bronze ingot production plants (ref. 40 CFR 60.130 et seq.)

Subpart N Iron and steel plants (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary emissions from basic oxygen process steel making facilities (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage treatment plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary copper smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary zinc smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary lead smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary aluminum reduction plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate fertilizer industry: Wet process phosphoric acid plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate fertilizer industry: Superphosphoric acid plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate fertilizer industry: Diammonium phosphate plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate fertilizer industry: Triple superphosphate plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate fertilizer industry: Granular triple superphosphate storage facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal preparation plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy production facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel plants: Electric arc furnaces (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft pulp mills (ref. 40 CFR 60.280 et seq.)

Subpart CC Glass manufacturing plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain elevators (ref. 40 CFR 60.300 et seq.)

Subpart EE Industrial surface coating: metal furniture (ref. 40 CFR 60.310 et seq.)

Subpart GG Stationary gas turbines (ref. 40 CFR 60.330 et seq.)

Subpart HH Lime manufacturing plants (ref. 40 CFR 60.340 et seq.)

Subpart KK Lead acid battery plants (ref. 40 CFR 60.370 et seq.)

Subpart LL Metallic mineral processing plants (ref. 40 CFR 60.380 et seq.)

Subpart MM Automobile and light duty truck surface coating operations (ref. 40 CFR 60.390 et seq.)

Subpart NN Phosphate rock plants (ref. 40 CFR 60.400 et seq.)

Subpart PP Ammonium sulfate manufacture (ref. 40 CFR 60.420 et seq.)

Subpart QQ Publication rotogravure printing (ref. 40 CFR 60.430 et seq.)

Subpart RR Pressure sensitive tape and label surface coating operations (ref. 40 CFR 60.440 et seq.)

Subpart SS Industrial surface coating: Large appliances (ref. 40 CFR 60.450 et seq.)

Subpart TT Industrial surface coating: Metal coils (ref. 40 CFR 60.460 et seq.)

Subpart UU Asphalt processing and asphalt roofing manufacture (ref. 40 CFR 60.470 et seq.)

Subpart VV Synthetic Organic Chemical Manufacturing Industry equipment leaks (VOC) (ref. 40 CFR 60.480 et seq.)

Subpart WW Beverage can surface coating operations (ref. 40 CFR 60.490 et seq.)

Subpart XX Bulk gasoline terminals (ref. 40 CFR 60.500 et seq.)

Subpart AAA New residential wood heaters (ref. 40 CFR 60.530 et seq.)

Subpart BBB Rubber tire manufacturing industry (ref. 40 CFR 60.540 et seq.)

Subpart DDD VOC emissions from the polymer manufacturing industry (ref. 40 CFR 60.560 et seq.)

Subpart FFF Flexible vinyl and urethane coating and printing (ref. 40 CFR 60.580 et seq.)

Subpart GGG Petroleum refineries—compressors and fugitive emission sources (ref. 40 CFR 60.590 et seq.)

Subpart HHH Synthetic fiber production facilities (ref. 40 CFR 60.600 et seq.)

Subpart III VOC emissions from Synthetic Organic Chemical Manufacturing Industry air oxidation unit processes (ref. 40 CFR 60.610 et seq.)

~~Subpart JJJ Petroleum dry cleaners (ref. 40 CFR 60.620 et seq.)~~

~~Subpart KKK Equipment leaks of VOC from onshore natural gas processing plants (ref. 40 CFR 60.630 et seq.)~~

~~Subpart LLL Onshore natural gas processing; SO<sub>2</sub> emissions (ref. 40 CFR 60.640 et seq.)~~

~~Subpart NNN VOC emissions from Synthetic Organic Chemical Manufacturing Industry distillation operations (ref. 40 CFR 60.660 et seq.)~~

~~Subpart OOO Nonmetallic mineral processing plants (ref. 40 CFR 60.670 et seq.)~~

~~Subpart PPP Wool fiberglass insulation manufacturing plants (ref. 40 CFR 60.680 et seq.)~~

~~Subpart QQQ VOC emissions from petroleum refinery waste water emissions (ref. 40 CFR 60.690 et seq.)~~

~~Subpart RRR Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes (ref. 40 CFR 60.700 et seq.)~~

~~Subpart SSS Magnetic tape coating facilities (ref. 40 CFR 60.710 et seq.)~~

~~Subpart TTT Industrial surface coating: Surface coating of plastic parts for business machines (ref. 40 CFR 60.720 et seq.)~~

~~Subpart UUU Calciners and dryers in mineral industries (ref. 40 CFR 60.730 et seq.)~~

~~Subpart VVV Polymeric coating of supporting substrates facilities (ref. 40 CFR 60.740 et seq.)~~

~~Subpart WWW Municipal solid waste landfills constructed, reconstructed or modified on or after May 30, 1991 (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991) (ref. 40 CFR 60.750 et seq.)~~

~~Subpart AAAA Small municipal waste combustion units constructed after August 30, 1999, or modified or reconstructed after June 6, 2001 (ref. 40 CFR 60.1000 et seq.) (See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)~~

~~Subpart CCCC Commercial and industrial solid waste incinerators constructed after November 30, 1999, or modified or reconstructed on or after June 1, 2001 (ref. 40 CFR 60.2000 et seq.) (See SWCAA 400-050(4) for rules regulating commercial and industrial solid waste incinerators constructed on or before November 30, 1999)~~

~~Subpart EEEE Standards of Performance for Other Solid Waste Incineration Unit for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. (ref. 40 CFR 60.2880 et seq.)~~

~~Subpart FFFF Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction on or Before December 9, 2004 (ref. 40 CFR 60.2980 et seq.)~~

~~Subpart HHHH Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)~~

~~Subpart KKKK Standards of Performance for Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)~~

~~Appendix A Test methods (ref. 40 CFR 60, Appendix A)~~

~~Appendix B Performance specifications (ref. 40 CFR 60, Appendix B)~~

~~Appendix C Determination of emission rate change (ref. 40 CFR 60, Appendix C)~~

~~Appendix D Required emission inventory information (ref. 40 CFR 60, Appendix D)~~

~~Appendix F Quality assurance procedures (ref. 40 CFR 60, Appendix F)~~

~~Appendix I Removable label and owner's manual (ref. 40 CFR 60, Appendix I))~~

((Note:)) Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

(a) 40 CFR 60.5 Determination of construction or modification

(b) 40 CFR 60.6 Review of plans

(c) Subpart B Adoption and Submittal of State Plans for Designated Facilities (ref. 40 CFR 60.20 et seq.)

(d) Subpart C Emission guidelines and compliance times (ref. 40 CFR 60.30 et seq.)

(e) Subpart Cb Emissions guidelines and compliance times for large municipal waste combustors that are constructed on or before September 20, 1994 (ref. 40 CFR 60.30b et seq.)

(f) Subpart Cc Emission guidelines and compliance times for municipal solid waste landfills (ref. 40 CFR 60.30c et seq.)

(g) Subpart Cd Emissions guidelines and compliance times for sulfuric acid production units (ref. 40 CFR 60.30d et seq.)

(h) Subpart Ce Emission guidelines and compliance times for hospital/medical/infectious waste incinerators (ref. 40 CFR 60.30e et seq.)

(i) Subpart BBBB Emission guidelines and compliance times for small municipal waste combustion units constructed on or before August 30, 1999 (ref. 40 CFR 60.1500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

(j) Subpart DDDD Emissions guidelines and compliance times for commercial and industrial solid waste incineration units that commenced construction on or before November 30, 1999 (ref. 40 CFR 60.2500 et seq.)

Note: These sources are regulated under SWCAA 400-050(4)

(k) Subpart JJJJ Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)

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

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

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

### SWCAA 400-130 Use of Emission Reduction Credits

[Statutory Authority: Chapter 70.94.141 RCW. Original adoption by Board 12/16/86; Amended by Board 9/21/93; 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Agency. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date, fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reduction credits shall revert back to the Agency. The Agency may keep said credits in a credit bank to be used by the Agency in the best interest of the area or credits may be dissolved by the Agency.

(2) **Permissible use.** An ERC may be used to satisfy the requirements for authorization of a bubble under SWCAA 400-120, as a part of a determination of "net emissions increase," or as an offsetting reduction to satisfy the requirements for new source review per SWCAA 400-111, 400-112, or 400-113(3). The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(3) **Conditions of use.** An ERC may be used only for the air contaminant(s) for which it was issued and in the area for which it was issued except in the case of transportable pollutants, which will be determined on a case-by-case basis and per interagency agreement for interstate transfers. The Agency may impose additional conditions of use of ERCs to account for temporal and spatial differences between the emission unit(s) that generated the ERC and the emission unit(s) that use the ERC. An ERC may not be used in place of a growth allowance as required under SWCAA 400-111.

#### (4) **Procedures to use ERC.**

(a) **Individual use.** When an ERC is used under subsection (2) of this section, an application must be submitted to the Agency and the Agency must issue a regulatory order for use of the ERC(s).

(b) **Sale or transfer of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Agency. After receiving an application, the Agency shall reissue a regulatory order to the new owner. The Agency shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.

(5) **Expiration of ERC.** An unused ERC and any unused portion thereof shall expire five years after the date the emission reduction was accomplished and not the date of the regulatory order.

(6) **Maintenance of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank.

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

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

### SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank

Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Originally adopted by Board as 400-120 on 3/20/84; renumbered to 400-131 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The owner(s) or operator(s) of any "stationary source" may apply to the Agency for an emission reduction credit (ERC) if the "stationary source" proposes to reduce its actual emission rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emission unit(s) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within (~~one hundred eighty~~) 180 calendar days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Agency.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule.

(b) The quantity of emission reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. For the purposes of this regulation, the old actual emission rate shall be defined as the highest annual emission rate during either of the last two full calendar years.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emission reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shut-down of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emission unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWCAA 400-112(5) nor as part of a bubble transaction under SWCAA 400-120 nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard.

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the "stationary source" or emission unit of the contaminant for

which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(4) **Additional information.** Within ~~((thirty))~~ 30 calendar days after the receipt of an ERC application, supporting data and documentation, the Agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within ~~((sixty))~~ 60 calendar days after all required information has been received, the Agency shall approve or deny the application, based on a finding that conditions in subsections (3)(a) through (g) of this section have been satisfied or not. If the application is approved, the Agency shall:

(a) Issue a regulatory order ~~((or equivalent document))~~ pursuant to this section to assure that the emissions from the "source" will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order ~~((or equivalent document))~~ shall include any conditions required to assure that subsections (3)(a) through (g) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order ~~((or equivalent document))~~ must prohibit operation of the affected equipment; and,

(b) Issue a regulatory order with emission reduction credit. The regulatory order shall specify the issue date, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the regulatory order is issued.

(6) **Maintenance and use of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

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

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

### SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

[Statutory Authority: Chapter 70.94.141 RCW, and 70.94.850 RCW. Original Board adoption as 400-125 4/17/84; renumbered to 400-136 in 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03]

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) **Conditions for ERC bank.**

(a) ERCs established under SWCAA 400-131 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be available for public allocation unless specifically requested by the owner(s) of the ERCs or the owner of the ERCs fails to maintain registration with the Agency.

(3) **Maintenance of the bank.**

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10 percent to allow for minor emission increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10 percent without compensation to the holder after public involvement pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The ~~((Control Officer))~~ Agency shall not provide greater than 25 percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the ~~((Control Officer))~~ Agency issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or emission unit the remaining amount of the emission reduction credit shall be reviewed by the ~~((Control Officer))~~ Agency and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the ~~((Control Officer))~~ Agency shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure reg-

ulatory consistency and equity of impact as a portion of the Washington SIP review. The results of the review shall be reported to the Board with recommendations for correction if the ~~((Control Officer))~~ Agency deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) **Expiration of public credits.**

(a) Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the shutdown of the Carborundum facility expired on July 8, 1996 as provided in Regulatory Order SWCAA 86-843 which established such credits.

(b) Emission reduction credits deposited in the bank for public allocation as the result of Board Resolution 1988-3 amended by Board Resolution 1989-3 expired on January 24, 1999.

(c) Credits and regulatory orders/certificates assigned to "stationary sources" from this public bank expired on July 8, 1996.

(d) Each "stationary source" which had credits assigned from the public bank by issuance of a regulatory order shall be approved for the total of previous emissions plus any additional amount approved under a regulatory order assigning public credits to that "stationary source" effective July 8, 1996.

(e) Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

**SWCAA 400-171 Public Involvement**

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 93-21-005 filed 10/7/93, effective 11/8/93; 95-17-084 filed 8/21/95, effective 9/21/95; 96-21-100 filed 10/21/96, effective 11/21/96; 99-07-029 filed 3/10/99, effective 4/11/99; 01-05-057 filed 2/15/01, effective 3/18/01; 03-21-045 filed 10/9/03, effective 11/9/03; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) **Public notice.**

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions. Notice shall be published for a minimum of ~~((fifteen (15) consecutive))~~ 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination

on the affected action for a minimum of 15 calendar days following the date of publication. Each notice shall, at a minimum, include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposed action;

(iii) Agency contact information;

(iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and

(v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter~~((s))~~ or fax~~((or electronic mail))~~. A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not ~~((requested))~~ provided may be processed without further public involvement.

(2) **Mandatory public comment period.**

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

~~((i))~~ Any air discharge permit application for a new or modified "stationary source" or emission unit that results in a significant net increase in emissions (actual or potential to emit) of any air contaminant regulated by state or federal law;

~~((ii))~~ (i) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on July 1, 2002) as part of review under SWCAA 400-046 or 400-110;

~~((iii))~~ (ii) Any order or permit to determine RACT;

~~((iv))~~ (iii) Any order or permit to establish a compliance schedule or a variance. A variance shall be handled as provided in SWCAA 400-180;

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

~~((vi))~~ (v) Any order or permit to authorize a bubble;

~~((vii))~~ (vi) Any order or permit used to establish a creditable emission reduction;

~~((viii))~~ (vii) An Order of Discontinuance as provided in SWCAA 400-230 (1)(g);

~~((ix))~~ (viii) Any order ~~((issued under SWCAA 400-091 which establishes limitations on a "stationary source's" potential to emit))~~ or permit used to establish a "synthetic minor";

~~((x))~~ (ix) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

~~((xi))~~ (x) Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

~~((xii))~~ (xi) Any ~~((nonroad engine permit application, air discharge permit application or other))~~ proposed action



for which the ~~((Control Officer))~~ Executive Director determines there is a substantial public interest~~(-))~~ including:

- Air discharge permit applications
- Nonroad engine permit applications
- Other actions of significance

(b) Any air discharge permit application designated for integrated review that includes a PSD permit application, an application for a "major modification" in a nonattainment area, or an application for a "major stationary source" in a nonattainment area must also comply with the public notice requirements of WAC 173-400-171.

(3) **Public comment period.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be published in a newspaper of general circulation in the area of the proposed project for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to subsections (2)(a)~~((xii))~~(x) or (2)(a)~~((xiii))~~(xi) of this section, publication on the SWCAA Internet homepage for a minimum of ~~((thirty (30)))~~ 30 calendar days may be substituted for newspaper publication. Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposal;

(iii) The location of the documents made available for public inspection;

(iv) Identification of a ~~((thirty-))~~ 30 calendar day period for submitting written comment to the Agency;

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

(vi) The length of the public comment period in the event of a public hearing; and

(vii) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117 (5)(c), the comment period notice shall explain the Agency's decision.

(c) EPA Notification. A copy of the comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why

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

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to applications for a "major modification" or a "major stationary source."

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

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

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

AMENDATORY SECTION (Amending WSR 06-23-073, filed 11/13/06, effective 12/14/06)

### **SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques**

[Statutory Authority: Chapter 70.94.141 RCW. Original Board adoption 400-160 4/17/84 (Refer to WAC 403); Amended by Board 92-04-030 filed 1/28/92; Amended by Board and renumbered to 400-200 in 93-21-005 filed 10/7/93, effective 11/8/93, original 400-200 was renumbered to 400-230; 95-17-084 filed 8/21/95, effective 9/21/95; 01-05-057 filed 2/15/01, effective 3/18/01; 06-23-073, filed 11/13/06, effective 12/14/06]

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks shall be configured to discharge vertically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks shall discharge at a point higher than surrounding buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under the Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

**(3) Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii)  $H_g = H + 1.5L$  where:

$H_g$  = "good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,

$H$  = height of nearby structure(s) measured from the ground level elevation at the base of the stack,

$L$  = lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

**(4) Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

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

## NEW SECTION

### **APPENDIX C FEDERAL STANDARDS ADOPTED BY REFERENCE**

[Statutory Authority: Chapter 70.94.141 RCW]

The following lists of affected subparts is provided for informational purposes only.

**STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES  
(NSPS) 40 CFR 60**

Subpart A General Provisions (ref. 40 CFR 60.1 et seq.)  
Subpart D Fossil Fuel-fired Steam Generators for Which Construction is Commenced After August 17, 1971, and Prior to September 19, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40 et seq.)

Subpart Da Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40a et seq.)

Subpart Db Industrial-Commercial-Institutional Steam Generating Units for Which Construction Commenced After June 19, 1984, and Prior to June 19, 1986, Which Have a Heat Input Greater Than 29 Megawatts but less Than 73 Megawatts (ref. 40 CFR 60.40b et seq.)

Subpart Dc Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)

Subpart E Incinerators (ref. 40 CFR 60.50 et seq.)

Subpart Ea Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)

Subpart Eb Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)

Subpart Ec Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996 (ref. 40 CFR 60.50c et seq.)

Subpart F Portland Cement Plants (ref. 40 CFR 60.60 et seq.)

Subpart G Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)

Subpart H Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)

Subpart I Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)

Subpart J Petroleum Refineries Which Produce Less Than 25,000 Barrels per Day of Refined Products (ref. 40 CFR 60.100 et seq.)

Subpart Ja Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)

Subpart K Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and Prior to May 19, 1978, Which Have a Capacity Greater Than 40,000 Gallons (ref. 40 CFR 60.110 et seq.)

Subpart Ka Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)

Subpart Kb Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed, Reconstructed, or Modified After July 23, 1984 (ref. 40 CFR 60.110b et seq.)

Subpart L Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)

Subpart M Brass and Bronze Ingot Production Plants (ref. 40 CFR 60.130 et seq.)

Subpart N Iron and Steel Plants (ref. 40 CFR 60.140 et seq.)

Subpart Na Secondary Emissions From Basic Oxygen Process Steel Making Facilities (ref. 40 CFR 60.140 et seq.)

Subpart O Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)

Subpart P Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)

Subpart Q Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)

Subpart R Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)

Subpart S Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)

Subpart T Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)

Subpart U Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)

Subpart V Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)

Subpart W Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)

Subpart X Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)

Subpart Y Coal Preparation Plants (ref. 40 CFR 60.250 et seq.)

Subpart Z Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)

Subpart AA Steel Plants: Electric Arc Furnaces (ref. 40 CFR 60.270 et seq.)

Subpart AAa Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (ref. 40 CFR 60.270a et seq.)

Subpart BB Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)

Subpart CC Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)

Subpart DD Grain Elevators (ref. 40 CFR 60.300 et seq.)

Subpart EE Industrial Surface Coating: Metal Furniture (ref. 40 CFR 60.310 et seq.)

Subpart GG Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)

Subpart HH Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)

Subpart KK Lead-Acid Battery Plants (ref. 40 CFR 60.370 et seq.)

Subpart LL Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)

Subpart MM Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)

Subpart NN Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)

Subpart PP Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)

Subpart QQ Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)

Subpart RR Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)

Subpart SS Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)

Subpart TT Industrial Surface Coating: Metal Coils (ref. 40 CFR 60.460 et seq.)

Subpart UU Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)

Subpart VV Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)

Subpart VVa Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)

Subpart WW Beverage Can Surface Coating Operations (ref. 40 CFR 60.490 et seq.)

Subpart XX Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)

Subpart AAA New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)

Subpart BBB Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)

Subpart DDD VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)

Subpart FFF Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)

Subpart GGG Petroleum Refineries - Compressors and Fugitive Emission Sources (ref. 40 CFR 60.590 et seq.)

Subpart GGG Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)

Subpart GGGa Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)

Subpart HHH Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)

Subpart III VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)

Subpart JJJ Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)

Subpart KKK Equipment Leaks of VOC From Onshore Natural Gas Processing Plants (ref. 40 CFR 60.630 et seq.)

Subpart LLL Onshore Natural Gas Processing; SO<sub>2</sub> Emissions (ref. 40 CFR 60.640 et seq.)

Subpart NNN VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)

Subpart OOO Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)

Subpart PPP Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)

Subpart QQQ VOC Emissions From Petroleum Refinery Waste Water Emissions (ref. 40 CFR 60.690 et seq.)

Subpart RRR Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes (ref. 40 CFR 60.700 et seq.)

Subpart SSS Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)

Subpart TTT Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)

Subpart UUU Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)

Subpart VVV Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)

Subpart WWW Municipal Solid Waste Landfills Constructed, Reconstructed or Modified on or After May 30, 1991 (ref. 40 CFR 60.750 et seq.) (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)

Subpart AAAA Small Municipal Waste Combustion Units Constructed After August 30, 1999, or Modified or Reconstructed After June 6, 2001 (ref. 40 CFR 60.1000 et seq.) (See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)

Subpart CCCC Commercial and Industrial Solid Waste Incinerators Constructed After November 30, 1999; or Modified or Reconstructed on or After June 1, 2001 (ref. 40 CFR 60.2000 et seq.) (See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)

Subpart EEEE Other Solid Waste Incineration Unit for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. (ref. 40 CFR 60.2880 et seq.)

Subpart FFFF Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004. (ref. 40 CFR 60.2980 et seq.)

Subpart HHHH Emission Guidelines and Compliance Times for Coal-fired Electric Steam Generating Units (ref. 40 CFR 60.4101 et seq.)

Subpart IIII Stationary Compression Ignition Internal Combustion Engines (ref. 40 CFR 60.4200 et seq.)

Subpart KKKK Standards of Performance for Stationary Combustion Turbines (ref. 40 CFR 60.4300 et seq.)

Appendix A Test Methods (ref. 40 CFR 60, Appendix A)

Appendix B Performance Specifications (ref. 40 CFR 60, Appendix B)

Appendix C Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)

Appendix D Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)

Appendix F Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)

Appendix I Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I))

#### **NATIONAL EMISION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61**

Subpart A General Provisions (ref. 40 CFR 61.01 et seq.)

Subpart B Radon Emissions from Underground Uranium Mines (ref. 40 CFR 61.20 et seq.)

Subpart C Beryllium (ref. 40 CFR 61.30 et seq.)

Subpart D Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)

Subpart E Mercury (ref. 40 CFR 61.50 et seq.)

Subpart F Vinyl Chloride (ref. 40 CFR 61.60 et seq.)

Subpart H Emissions of Radionuclides Other Than Radon from Department of Energy Facilities (ref. 40 CFR 61.90 et seq.)

Subpart I Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and not Covered by Subpart H (ref. 40 CFR 61.100 et seq.)

Subpart J Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)

Subpart K Radionuclide Emissions from Elemental Phosphorus Plants (ref. 40 CFR 61.120 et seq.)

Subpart L Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)

Subpart M Asbestos (ref. 40 CFR 61.140 et seq.)

Subpart N Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)

Subpart O Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)

Subpart P Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)

Subpart Q Radon Emissions from Department of Energy Facilities (ref. 40 CFR 61.190 et seq.)

Subpart R Radon Emissions from Phosphogypsum Stacks (ref. 40 CFR 61.200 et seq.)

Subpart T Radon Emissions from the Disposal of Uranium Mill Tailings (ref. 40 CFR 61.220 et seq.)

Subpart V Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

Subpart W Radon Emissions from Operating Mill Tailings (ref. 40 CFR 61.250 et seq.)

Subpart Y Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)

Subpart BB Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)

Subpart FF Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

#### **NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

##### **(MACT) 40 CFR 63**

Subpart A General Provisions (ref. 40 CFR 63.1 et seq.)

Subpart B Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(G) and 112(J) (ref. 40 CFR 63.50 et seq.)

Subpart D Compliance Extensions for Early Reductions of Hazardous Air Pollutants (ref. 40 CFR 63.70 et seq.)

Subpart F Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)

Subpart G Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)

Subpart H Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)

Subpart I Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)

Subpart J Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)

Subpart L Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)

Subpart M Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (*as it applies to major sources only*) (ref. 40 CFR 63.320 et seq.)

Subpart N Hard and Decorative Chromium Electroplating and Chromium Anodizing Operations (ref. 40 CFR 63.340 et seq.)

Subpart O Ethylene Oxide Emissions Standards for Sterilization Facilities (ref. 40 CFR 63.360 et seq.)

Subpart Q Industrial Process Cooling Towers (ref. 40 CFR 63.400 et seq.)

Subpart R Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) (ref. 40 CFR 63.420 et seq.)

Subpart S Pulp and Paper Industry (ref. 40 CFR 63.440 et seq.)

Subpart T Halogenated Solvent Cleaning (ref. 40 CFR 63.460 et seq.)

Subpart U Group I Polymers and Resins (ref. 40 CFR 63.480 et seq.)

Subpart W Epoxy Resins Production and Non-Nylon Polyamides Production (ref. 40 CFR 63.520 et seq.)

Subpart X Secondary Lead Smelting (ref. 40 CFR 63.541 et seq.)

Subpart Y Marine Tank Vessel Loading Operations (ref. 40 CFR 63.560 et seq.)

Subpart AA Phosphoric Acid Manufacturing Plants (ref. 40 CFR 63.600 et seq.)

Subpart BB Phosphate Fertilizers Production Plants (ref. 40 CFR 63.620 et seq.)

Subpart CC Petroleum Refineries (ref. 40 CFR 63.640 et seq.)

Subpart DD Off-Site Waste and Recovery Operations (ref. 40 CFR 63.680 et seq.)

Subpart EE Magnetic Tape Manufacturing Operations (ref. 40 CFR 63.701 et seq.)

Subpart GG Aerospace Manufacturing and Rework Facilities (ref. 40 CFR 63.741 et seq.)

Subpart HH Oil and Natural Gas Production Facilities (ref. 40 CFR 63.760 et seq.)

Subpart II Shipbuilding and Ship Repair (Surface Coating) (ref. 40 CFR 63.780 et seq.)

Subpart JJ Wood Furniture Manufacturing Operations (ref. 40 CFR 63.800 et seq.)

Subpart KK Printing and Publishing Industry (ref. 40 CFR 63.820 et seq.)

Subpart LL Primary Aluminum Reduction Plants (ref. 40 CFR 63.840 et seq.)

Subpart MM Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semicheical Pulp Mills (ref. 40 CFR 63.860 et seq.)

Subpart OO Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)

Subpart PP Containers (ref. 40 CFR 63.920 et seq.)

Subpart QQ Surface Impoundments (ref. 40 CFR 63.940 et seq.)

Subpart RR Individual Drain Systems (ref. 40 CFR 63.960 et seq.)

Subpart SS Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)

Subpart TT Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)

Subpart UU Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)

Subpart VV Oil-Water Separators and Organic-Water Separators (ref. 40 CFR 63.1040 et seq.)

Subpart WW Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)

Subpart XX Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)

Subpart YY Generic Maximum Achievable Control Technology (ref. 40 CFR 63.1100 et seq.)

Subpart CCC Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)

Subpart DDD Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)

Subpart EEE Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)

Subpart GGG Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)

Subpart HHH Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)

Subpart III Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)

Subpart JJJ Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)

Subpart LLL Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)

Subpart MMM Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)

Subpart NNN Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)

Subpart OOO Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)

Subpart PPP Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)

Subpart QQQ Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)

Subpart RRR Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)

Subpart TTT Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)

Subpart UUU Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)

Subpart VVV Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)

Subpart XXX Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)

Subpart AAAA Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)

Subpart CCCC Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)

Subpart DDDD Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)

Subpart EEEE Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)

Subpart FFFF Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)

Subpart GGGG Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)

Subpart HHHH Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)

Subpart IIII Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)

Subpart JJJJ Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)

Subpart MMMM Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)

Subpart NNNN Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)

Subpart OOOO Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)

Subpart PPPP Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)

Subpart QQQQ Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)

Subpart RRRR Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)

Subpart SSSS Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)

Subpart TTTT Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)

Subpart UUUU Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)

Subpart VVVV Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)

Subpart WWWW Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)

Subpart XXXX Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)

Subpart YYYYY Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)

Subpart AAAAA Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)

Subpart BBBBBB Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)

Subpart CCCCC Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)

Subpart EEEEE Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)

Subpart FFFFF Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)

Subpart GGGGG Site Remediation (ref. 40 CFR 63.7880 et seq.)

Subpart HHHHH Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)

Subpart IIIII Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)

Subpart JJJJJ Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)

Subpart KKKKK Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)

Subpart LLLLL Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)

Subpart MMMMM Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)

Subpart NNNNN Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)

Subpart PTTTT Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)

Subpart QQQQQ Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)

Subpart RRRRR Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)

Subpart SSSSS Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)

Subpart TTTTT Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)

Subpart WWWW Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)

Subpart YYYYY Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)

Subpart ZZZZ Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)

Subpart BBBB Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)

Subpart CCCCC Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)

Subpart DDDDD Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)

Subpart EEEEE Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFF Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)

Subpart GGGGG Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)

Subpart LLLLLL Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)

Subpart MMMMM Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)

Subpart NNNNN Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)

Subpart OOOOO Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)

Subpart PTTTT Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)

Subpart QQQQQ Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)

Subpart RRRRR Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)

Subpart SSSSS Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)

Subpart TTTTTT Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)

Subpart WWWW Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)

Appendix A Test Methods (ref. 40 CFR 63, Appendix A)

Appendix B Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)

Appendix C Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)

Appendix D Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)

Appendix E Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

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

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

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

## WSR 09-16-039

### PROPOSED RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed July 28, 2009, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-05-057.

Title of Rule and Other Identifying Information: The department is amending WAC 388-543-1150 Limits and limitation extensions, 388-543-1300 Equipment, related supplies, or other nonmedical supplies, and devices that are not covered, 388-543-1600 Items and services which require authorization, and 388-543-2300 Bathroom/shower equipment.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on September 22, 2009, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 23, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 22, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by September 8, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is: (1) Eliminating the coverage of the following items for adults: Bathroom and shower equipment, disinfectant sprays, surgical stockings, custom vascular supports, graduated com-

pression stockings, and blood pressure monitoring equipment; (2) reducing coverage of the following items for adults and children: Nonsterile and sterile gloves, incontinent supplies, and diabetes test supplies (lancets and test strips); and (3) adding light boxes, bumper pads, surgical masks, and handheld showers to the noncovered list.

**Reasons Supporting Proposal:** These amendments are necessary for the department to fully meet the legislatively-mandated appropriation reduction in section 1109, chapter 564, Laws of 2009 (ESHB 1244) for durable medical equipment for fiscal years 2010-2011 and to further clarify the department's coverage policy.

**Statutory Authority for Adoption:** Section 1109, chapter 564, Laws of 2009 (ESHB 1244), RCW 74.04.050, 74.04.057 [74.04.057], 74.08.090.

**Statute Being Implemented:** Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

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

**Name of Proponent:** Department of social and health services, governmental.

**Name of Agency Personnel Responsible for Drafting:** Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1306; **Implementation and Enforcement:** Erin Mayo, P.O. Box 45560, Olympia, WA 98504-5560, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Erin Mayo, DME Program Manager, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1729, fax (360) 586-9727, e-mail mayoe@dshs.wa.gov.

July 29, 2009

Stephanie E. Schiller  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-17 issue of the Register.

**WSR 09-16-040**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Health and Recovery Services Administration)

[Filed July 28, 2009, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-09-059.

**Title of Rule and Other Identifying Information:** The department is amending WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies and 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.

**Hearing Location(s):** Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 8, 2009, at 10:00 a.m.

**Date of Intended Adoption:** Not earlier than September 9, 2009.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 8, 2009.

**Assistance for Persons with Disabilities:** Contact Jenisha Johnson, DSHS rules consultant, by August 25, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The department is reducing the coverage of cough and cold products to a few basic products (expectorant, decongestant, cough suppressant, and saline dose drops).

**Reasons Supporting Proposal:** These amendments are required to meet the legislatively mandated appropriation reduction in ESHB 1244 for prescription drugs.

**Statutory Authority for Adoption:** RCW 74.04.050, 74.08.090, SSA § 1927 (42 U.S.C. 1396r-8) (d)(2)(D).

**Statute Being Implemented:** Section 1109, chapter 564, Laws of 2009 (ESHB 1244).

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

**Name of Proponent:** Department of social and health services, governmental.

**Name of Agency Personnel Responsible for Drafting:** Wendy Boedigheimer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1342; **Implementation and Enforcement:** Siri A. Childs, Pharm D, P.O. Box 45506, Olympia, WA 98504-5504, (360) 725-1564.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department analyzed the proposed rule amendments and concludes that they will impose no new costs on small businesses. The preparation of a comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dr. Siri Childs, Pharmacy Administrator, P.O. Box 45560, Olympia, WA 98504-5560, phone (360) 725-1564, fax (360) 586-9727, e-mail childsa@dshs.wa.gov.

July 28, 2009

Stephanie E. Schiller  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

**WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The department covers:



(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride prescribed for clients under the age of twenty-one.

(d) OTC drugs, vitamins, and minerals when determined by the department to be the least costly therapeutic alternative for a medically accepted indication. Subsection (1)(d) does not apply to products prescribed for the treatment of cough or cold symptoms. See WAC 388-530-2000 (1)(i) and 388-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(g) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(h) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(i) For the treatment of cough and cold symptoms:

(i) Only the following generic, single ingredient formulations:

(A) Guaifenesin 100 mg/5 ml liquid or syrup;

(B) Dextromethorphan 15 mg/5 ml liquid or syrup;

(C) Pseudoephedrine 30 mg or 60 mg tablets;

(D) Saline nasal spray 0.65%; and

(ii) Generic combination product dextromethorphan-guaifenesin 10-100 mg/5 ml syrup, including sugar-free formulations.

(2) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 09-05-007, filed 2/5/09, effective 3/8/09)

**WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.** (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; ~~((or))~~

(iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC 388-530-2000 (1)(i).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

- (ii) With a terminated NDC;
  - (iii) Whose shelf life has expired; or
  - (iv) Which does not have an eleven-digit NDC.
  - (g) Over-the-counter (OTC) drugs, vitamins, and minerals, except when determined by the department to be the least costly therapeutic alternative for a medically accepted indication.
  - (h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).
  - (i) Free pharmaceutical samples.
  - (j) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.
- (2) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 388-501-0165. (See WAC 388-534-0100 for EPSDT rules).
- (3) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

**WSR 09-16-054**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed July 29, 2009, 10:02 a.m.]

Continuance of WSR 09-11-119.

Preproposal statement of inquiry was filed as WSR 08-11-074.

Title of Rule and Other Identifying Information: New section WAC 181-78A-125 describes field placement agreements. WAC 181-78A-132 is a new section describing requirements for out-of-state institutions of higher education wishing to develop field placements within Washington state.

Hearing Location(s): Red Lion at the Park, 201 West North River Drive, Spokane, WA 99201, on September 23, 2009, at 8:30 a.m.

Date of Intended Adoption: September 23, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna by September 16, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New section WAC 181-78A-125 provides rules for educator preparation programs to establish and maintain field placement agreements with all Washington school districts. Agreements to include duties, qualifications, length of placement and authorizing signatures.

New section WAC 181-78A-132 provides rules for out-of-state institution developing field placements. Require-

ments include documentation of the institutions regional status, state approval and, for programs offering degrees, higher education coordinating board approval. Rules further require program description in applications, start date and enrollment projections. Rule includes data and demonstration of regional demand as well as Washington state school [school] district support. The field experience program must be based on Washington state standards for educator preparation. Out-of-state programs must prepare and submit agreements per WAC 181-78A-125, report to the professional educator standards board (PESB) as required and the PESB is required to post information on field experience programs in Washington state developed under this section on their web site.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

July 29, 2009

David Brenna

Legislative and  
Policy Coordinator

NEW SECTION

**WAC 181-78A-125 Field placement agreements.** All educator preparation programs approved by the professional educator standards board shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

- (1) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating teacher/administrator;
- (2) Duties and responsibilities of site supervisor and cooperating teacher/administrator;
- (3) Anticipated length and nature of field experience;
- (4) Signatures from district representative.

NEW SECTION

**WAC 181-78A-132 Programs approved in other states operating field experiences in Washington state.** State approved preparation programs at a regionally accredited college or university in the professional field for which

certification is issued that wish to enroll candidates for certification or endorsement in a supervised field experience within Washington state shall comply with the following:

(1) Application for approval. Each institution must submit a proposal that addresses components adopted and published by the professional educator standards board, including:

- (a) Verification of regional accreditation;
- (b) Verification of state approval;
- (c) Verification of higher education coordinating board approval (if offering degree program);
- (d) Planned certification or endorsement program;
- (e) Proposed start date;
- (f) Projected enrollment;
- (g) Data indicating need for program related to geographic location or nature of program offered;
- (h) Indication of Washington school district support for program;
- (i) Explanation of means by which program will ensure candidates have formalized learning opportunities rooted in Washington state standards.

(2) Field placement agreements. Institutions must comply with requirements of WAC 181-78A-125.

(3) Annual data reporting.

(4) The professional educator standards board shall publish on its web site a list of those out-of-state programs approved to offer field experiences within Washington state.

(5) The professional educator standards board shall publish on its web site relevant program approval status information on the out-of-state program from the state in which the program is approved.

(6) Institutions will comply with applicable annual data reporting requirements requested by the professional educator standards board.

### **WSR 09-16-056**

#### **PROPOSED RULES**

#### **HOME CARE**

#### **QUALITY AUTHORITY**

[Filed July 29, 2009, 12:22 p.m.]

Continuance of WSR 09-15-192.

Preproposal statement of inquiry was filed as WSR 09-08-079.

Title of Rule and Other Identifying Information: Individual provider fingerprinting, one hundred twenty-day provisional hire.

Hearing Location(s): Home Care Quality Authority (HCQA) Board Room, 4317 6th Avenue S.E., Suite 101, Lacey, WA 98503 (link to HCQA map available from [http://www.hcqa.wa.gov/Contact/contact\\_hcqa.html](http://www.hcqa.wa.gov/Contact/contact_hcqa.html) or by calling (360) 493-9350), on August 31, 2009, at 11:00 a.m.

Date of Intended Adoption: Not earlier than September 22, 2009.

Submit Written Comments to: Lisa Livingston, HCQA Rules Coordinator, P.O. Box 40940, Olympia, WA 98504-0940, delivery 4317 6th Avenue S.E., Suite 101, Lacey, WA

98503, e-mail [llivingston@hcqa.wa.gov](mailto:llivingston@hcqa.wa.gov), fax (360) 493-9380, by 5:00 p.m. on August 25, 2009.

Assistance for Persons with Disabilities: Contact Lisa Livingston by August 21, 2009, phone (360) 493-9350.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Continuance is being filed in order to adjust original hearing date from August 25, 2009, to August 31, 2009.

Statutory Authority for Adoption: RCW 74.39A.280(3) Authority duties, Title 74 RCW.

Statute Being Implemented: RCW 74.39A.280(3).

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

Name of Proponent: HCQA, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lisa Livingston, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350; and Enforcement: Rick Hall, P.O. Box 40940, Olympia, WA 98504-0940, (360) 493-9350.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that no new costs will be imposed on small businesses or nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. Rule[s] are exempt per RCW 34.05.328(5).

May 20, 2009

Rick Hall

Executive Director

### **WSR 09-16-057**

#### **PROPOSED RULES**

#### **LIQUOR CONTROL BOARD**

[Filed July 29, 2009, 12:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-126.

Title of Rule and Other Identifying Information: Adding a new section in chapter 314-07 WAC, How to apply for a liquor license and amending chapter 314-09 WAC, Contested liquor license applications and renewals.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 9, 2009, at 10:00 a.m.

Date of Intended Adoption: September 23, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail [rules@liq.wa.gov](mailto:rules@liq.wa.gov), fax (360) 664-9689, by September 9, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by September 23, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement board interim policy #4-2009 - Delegation of authority. Proposed rules on contested liquor license applications and renewals have been revised to provide clarity to stakeholders and liquor licensees.

Reasons Supporting Proposal: The proposed rules implement current board policy and provide clarity to liquor licensees and stakeholders.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.010.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Director Licensing, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328.

July 29, 2009  
Ruthann Kurose  
Board Member

**NEW SECTION**

**WAC 314-07-121 Board delegation of authority to make initial threshold determinations.** (1) The board may delegate to the licensing and regulation division director the authority to make initial threshold determinations on liquor license applications and renewals where:

- (a) Objections have been submitted; or
- (b) The applicant/licensee appears to be ineligible for a license due to failure to meet requirements under statute or rule. Failure to meet eligibility requirements includes data obtained through a criminal background check or criminal history record information (CHRI) report.

(2) Threshold determinations will be made in accordance with the provisions of RCW 66.24.010 as well as all other relevant sections of state law and Title 314 WAC. The licensing and regulation division director shall:

- (a) Give substantial weight to objections from a local authority where objections are based on chronic illegal activity;
- (b) Give due consideration to the location of a new liquor license application as it relates to the proximity to churches, schools, and public institutions as well as other considerations raised by the local authority.

(3) If the licensing and regulation director determines that the board will seek denial of a license application or non-renewal of an existing license, an aggrieved applicant/licensee may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC).

(4) If the licensing and regulation director determines that the board will seek to approve a license or renewal over the objection of the local authority, the local authority may request an adjudicative hearing before an administrative law judge (see chapter 314-09 WAC). The licensing and regula-

tion director will determine whether an adjudicative hearing will be granted to the local authority.

An adjudicative hearing will be granted where the objection is based on alleged conduct related to public safety within the jurisdiction of the board under Title 66 RCW.

**AMENDATORY SECTION** (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

**WAC 314-09-010 Objections to liquor license applications.** (1) **How can persons, entities, and governmental jurisdictions object to the issuance of a liquor license or permit?** Per RCW 66.24.010 (8) and (9), the board will notify certain entities of the following types of annual or special occasion liquor license or permit applications. In addition to the following entities, any person or group may comment in writing to the board regarding ~~((a))~~ an application.

Type of Application	Entities the board will notify
<ul style="list-style-type: none"> <li>• Applications for an annual license or permit at a new location that would allow the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go; and</li> <li>• Applications to change the class of an existing annual liquor license or permit that allows the sale and/or service of alcohol beverage to the public for on-premises consumption or to-go.</li> </ul>	<ul style="list-style-type: none"> <li>• Governmental jurisdictions in which the premises is located, and</li> <li>• Schools, churches, and public institutions within 500 feet of the premises to be licensed (as measured according to RCW 66.24.010(9)).</li> </ul>
<ul style="list-style-type: none"> <li>• Applications for any annual or special occasion liquor license or permit that allows the sale and/or service of alcohol beverage; and</li> <li>• Changes of ownership at existing licensed premises.</li> </ul>	<p><del>((a))</del> Governmental jurisdictions only.</p>

(2) **What will happen if a person or entity objects to a liquor license application?** When deciding whether to issue or deny a liquor license application ~~((for permit))~~ or permit, the board will give due consideration to input from governmental jurisdictions in which the premises is located; private schools, churches, and public institutions within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and other persons or groups. Note~~((+))~~: Per RCW 66.24.010 (9), the board shall not issue a new ~~((retail))~~ retail liquor license if a tax-supported public elementary or secondary school within 500 feet of the premises to be licensed objects to the application (500 feet as measured according to RCW 66.24.010(9)).

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW). If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the licensee will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a liquor license application based on the objection from a governmental jurisdiction; a private school, church, or public institution within 500 feet of the premises (as measured according to RCW 66.24.010(9)); and/or other persons or groups, the applicant(s) may either:

(i) Reapply for the license or permit no sooner than one year from the original denial date; or

(ii) Submit a written request, within twenty days of the date of licensee's receipt ~~of the~~ of the ~~(denial letter)~~ intent to deny, for an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 05-07-011, filed 3/4/05, effective 4/4/05)

**WAC 314-09-015 Objections to liquor license renewals. (1) How can local governmental jurisdictions object to the renewal of a liquor license?**

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual liquor licenses in that jurisdiction that are up for renewal.

(b) Per RCW 66.24.010(8), if a governmental jurisdiction wants to object to the renewal of a liquor license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

~~((c))~~ (c) This letter must be received by the board at least thirty days before the liquor license expires. The objection must state specific reasons and facts that show issuance of the liquor license at the proposed location or to the applicant business will detrimentally impact the safety, health, or welfare of the community.

~~((d) If the objection is received within 30 days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation by the Enforcement Division.)~~ (d) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(e) Objections from the public will be referred to the appropriate governmental jurisdiction for action under subsection (2) ~~(below)~~ of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate governmental jurisdiction. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

**(2) What will happen if a governmental jurisdiction objects to the renewal of a liquor license?** The board will give due consideration to a governmental jurisdiction's objection to a liquor license renewal of a premises in its jurisdiction. Based on the governmental jurisdiction's input and any information in the licensing file, the board will decide to either renew the liquor license, or to proceed with nonrenewal.

<del>((a))</del> <u>(a)</u> Board decides to renew the liquor license:	<del>((b))</del> <u>(b)</u> Board decides to <del>(pursue nonrenewal of (not renew))</del> <u>pursue nonrenewal of the liquor license:</u>
(i) The board will notify the governmental jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.	(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.

<del>((a))</del> <u>(a)</u> Board decides to renew the liquor license:	<del>((b))</del> <u>(b)</u> Board decides to <del>(pursue nonrenewal of (not renew))</del> <u>pursue nonrenewal of the liquor license:</u>
(ii) The governmental jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).	(ii) The licensee may contest the nonrenewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW).  (iii) If the licensee requests a hearing, the governmental jurisdiction <del>((s))</del> will be <del>((notified))</del> <u>notified</u> .  <del>((iv))</del> (iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the liquor license until a final decision is made.

**WSR 09-16-058  
PROPOSED RULES  
LIQUOR CONTROL BOARD**

[Filed July 29, 2009, 1:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-04-039.

Title of Rule and Other Identifying Information: Chapter 314-52 WAC, Advertising has been reviewed for clarity, accuracy, and relevance. The proposed rules implement legislation from 2006, SHB 3150, 2007, SSB 5721 and HB 2240, and the following board policies and guidelines: Use of licensed sports team name and trademark, advertising events held at sports/entertainment facilities, criteria for approval of alcohol advertising, advertising vs. information for the purpose of determining extension of money's worth, and coupon offers.

Hearing Location(s): Washington State Liquor Control Board, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 16, 2009, at 10:00 a.m.

Date of Intended Adoption: October 7, 2009.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 16, 2009.

Assistance for Persons with Disabilities: Contact Karen McCall by September 16, 2009, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement 2006 and 2007 legislation as it pertains to advertising, board policies, and guidelines. The proposed rules were also revised to reflect the agency's focus on public safety and minimizing youth access and exposure to alcohol advertising and marketing.

Reasons Supporting Proposal: The proposed rules reflect current practices and clarify what is allowed and prohibited in the area of advertising as it applies to our stakeholders and liquor licensees.

Statutory Authority for Adoption: RCW 66.08.030, 66.08.060, 66.28.010.

Statute Being Implemented: RCW 66.08.060, 66.28.010.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation and Enforcement: Pat Parmer, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not change the impact on liquor licensees or stakeholders.

A cost-benefit analysis is not required under RCW 34.05.328.

July 29, 2009  
Ruthann Kurose  
Board Member

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-005 Purpose and application of rules.**

(1) ~~((PREAMBLE: The purpose of this title is to))~~ The liquor control board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.

(2) No person engaged in business as a ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor ~~((, directly or indirectly, or through an affiliate,))~~ shall publish or disseminate ~~((or cause to be published or disseminated))~~ in any media any advertisement of liquor, unless such advertisement is in conformance with these rules ~~((, Provided, That these provisions shall not apply to the publisher of any newspaper, magazine or similar publication, nor to the operator of any radio or television station unless such publisher or operator is engaged in business as a producer, manufacturer, bottler, importer, distributor, or retailer of liquor, directly or indirectly, or through an affiliate))~~.

(3) The board holds each ~~((producer,))~~ manufacturer, ~~((bottler,))~~ importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor control board in any advertising material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the ~~((advertising coordinator of the))~~ Washington state liquor control board, but advisory opinions will be restricted to advertising material submitted by ~~((said producers,))~~ manufacturers, ~~((bottlers,))~~ importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor control board shall be presented to the ~~((advertising coordinator~~

~~of the))~~ Washington state liquor control board for prior approval before placement ~~((, Provided, however, That))~~. All other forms of advertising approved and accepted by the board ~~((advertising coordinator and which are acceptable to the board merchandising committee under the provisions of WAC 314-52-040))~~ shall not be prohibited under this rule.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-010 Mandatory statements.** (1) Brand advertising of spirituous liquor by any manufacturer shall contain the following information:

(a) The name and address of the manufacturer responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs and the type ~~((thereof))~~ corresponding with the statement of class and type which is required by federal regulations to appear on the label of the product.

(c) A statement of the alcoholic content ~~((by proof, except that for cordials and liqueurs, gin fizzes, cocktails, highballs, bitters and other specialties, the alcoholic content may))~~ for distilled spirits shall be stated in ~~((percent age by volume or by proof))~~ percent alcohol by volume.

(d) In the case of distilled spirits ~~((other than cordials, liqueurs and specialties))~~ produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled.

(e) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled.

(2) Brand advertising of wine by any manufacturer or distributor shall contain the following information:

(a) The name and address of the manufacturer or distributor responsible for its publication. (Street number may be omitted.)

(b) A conspicuous statement of the class, type or distinctive designation to which the product belongs, corresponding with the statement of class, type, or distinctive designation which is required by federal regulation to appear on the label of the product.

(3) Brand advertising of malt beverages by any manufacturer, importer, or distributor shall contain the following information:

(a) The name and address of the manufacturer, importer or distributor responsible for publication of the advertisement. (Street number may be omitted.)

(b) A conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required by federal regulations to appear on the label of the product.

~~((4) Alcoholic content of beer. Retail licensees who choose to offer beer for sale at both less than four percent by weight and more than four percent by weight, alcoholic content, packaged in identical packages, shall be required to separate the two strengths of beer in their displays, and shall be required to identify by point-of-sale advertising which is the~~

higher strength and which is the lower strength beer. Manufacturers, importers and distributors of such beer shall supply such shelf tickets free of charge to retail licensees. Provided, however, That no promotion of the higher alcoholic content shall be included in such advertising.)

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

**WAC 314-52-015 General.** (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Educational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various types of liquors ((such as German wines, French cognacs, or other classifiable types of product. All liquor advertising shall be modest, dignified and in good taste and shall not contain:

(1) Any statement or illustration that)). All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

(a) Is false or misleading ((in any material particular.

(2) Any statement, picture, or illustration which));

(b) Promotes over consumption((-

(3) Any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which is likely to mislead the consumer.

Nothing in this section shall prohibit the use of any enforceable guaranty in substantially the following form: "We will refund the purchase price to the purchaser if he is in any manner dissatisfied with the contents of this package."

(6) Any statement that the product is produced, blended, made, bottled, packed or sold under, or in accordance with, any authorization, law, or regulation of any municipality, county, or state, federal or foreign government unless such statement is required or specifically authorized by the laws or regulations of such government; and if municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statement relating thereto.

(7) Any statement, design or device representing that));

(c) Shows a person who appears to be under twenty-one years of age consuming alcohol:

(d) Uses the Washington state liquor control board's seal or refers to Washington state liquor control board, except where required by law:

(e) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue ((in any particular.)) or tends to create a misleading impression((-

(8) Any statement, picture, or illustration implying that));

(f) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration ((referring)) that refers to any known athlete, if such statement, picture, or

illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to ((such)) any known athlete's athletic achievements((-

(9) Any depiction of));

(g) Depicts a child or other person under ((legal age to consume liquor; any depiction of)) twenty-one years of age, or includes:

(i) Objects, such as toys or characters, ((suggestive of)) suggesting the presence of a child((-, nor any other depiction designed in any manner as to be especially appealing to children or other persons under legal age to consume liquor.

(10) Any reference to any religious character, sign or symbol, except in relation to kosher wines or where such are a part of an approved label));

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(h) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under twenty-one years of age:

(i) Associates alcohol with social achievement; or

(j) Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

(2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:

(a) Cite the name of the author and date of the research or study supporting the claim; and

(b) Provide a copy of this research or study to the board's licensing and regulation division.

AMENDATORY SECTION (Amending Order 108, Resolution No. 117, filed 8/11/82)

**WAC 314-52-030 Liquor advertising prohibited in school publications.** No liquor advertising shall:

(1) Be carried in any publication connected or affiliated with any elementary or secondary schools; ((nor shall any liquor advertising)) or

(2) Be connected with such schools ((when broadcast over radio or television: Provided, That institutional advertising, as defined in WAC 314-52-015, may be carried, if the board advertising coordinator interposes no objection)) in any media.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-040 Contests, competitive events, premiums and coupons.** (1) Liquor advertisements may offer consumers premiums or prizes, upon completion of any coupon, contest, or competitive event, which may or may not require proof of purchase of the advertised product((-). Provided, ((however,)) that:

(a) No one under twenty-one years of age is allowed to participate, and no premiums, prizes, coupons, contests, or

competitive events are targets to persons under twenty-one years of age:

(b) Contests or sweepstakes that offer prizes or premiums to consumers through a game of chance or random drawing, shall not require proof of purchase, and must comply with the requirements of RCW ((9.46.020(14))) 9.46.0356 regarding ((lotteries: And provided further, That no)) gambling.

(2) Liquor advertisements are prohibited by manufacturers, importers, or distributors ((may)) that:

(a) Offer any premium or prize redeemable through a Washington state liquor store or any retail liquor outlet licensed by the state of Washington, such as "instant" or "in-store" redeemable offers:

(b) Offer an "instant rebate" on either liquor or nonliquor items; or

(c) Offer any premium redeemable through retail outlets prohibited by the advancement of "money or money's worth" from a nonretail licensee to a retail licensee in chapter 66.28 RCW.

(3) A retailer may have its own coupon offers, provided the "after rebate" price does not put the product below cost, and provided there is no undue influence by a nonretail licensee, the coupon is at the retailer's free initiative and the retailer is covering the entire cost.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-070 Outdoor advertising.** (1) "Outdoor advertising" by manufacturers, importers, distributors, and retail licensees for these purposes shall include all signs visible to the general public (~~(, whether permanent or temporary))~~ from the outside of the retail premises, advertising the sale and service of liquor ((excluding point-of-sale brand signs, which are defined and governed as otherwise provided in WAC 314-52-113) as well as), trade name and room name signs.

(2) The board limits each retail licensed premises to a total of four signs referring to alcoholic beverages, brand names, or manufacturers that are visible from the outside of the retail licensed premises. The board also limits the size of a sign advertising alcohol, brand names, or manufacturers that are visible from the outside of a retail licensed premises to six hundred square inches.

(3) Outdoor signs shall be designed, installed, and ((used in a manner not offensive to the public, and shall)) comply with all liquor advertising rules. These rules include, but are not limited to:

(a) WAC 314-52-015((1), which:

(i) Prohibits any statement or illustration that is false or misleading in any material particular;

(ii) Prohibits any statement, picture or illustration which promotes overconsumption;

(iii) Prohibits any statement, picture, illustration, design, device, or representation which is undignified, obscene, indecent, or in bad taste.) which contains institutional advertising prohibitions; and

(b) WAC 314-52-110((1), which requires that every advertisement by a retail licensee shall carry the licensed

trade name or the registered franchise name or the trademark name. The term "trade name" shall mean the "licensed trade name" as it appears on the issued license)) which contains advertising requirements by a retail licensee.

~~((3))~~ (4) Prior board approval is not required before installation and use of outdoor ((signs/))advertising; however, outdoor ((signs/))advertising ((excluding outdoor readerboard messages and/or interior signs visible through a window of a premises)) not in compliance with board rules will be required to be altered or removed at the licensee's expense. If prior approval is desired, the licensee, applicant or their agent may submit ((three copies)) a copy to the board ((advertising coordinator)) for approval.

~~((4))~~ (5) No outdoor advertising of liquor shall be placed ((in proximity to)) within five hundred feet of schools, churches, ((or playfields)) public playgrounds, or athletic fields used primarily by minors, ((where administrative body of said schools, churches, playfields, object to such placement, nor)) or any place which the board in its discretion finds contrary to the public interest. "Tourist Oriented Directional Signs" per RCW 47.36.320, are exempt from this requirement.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-085 Programs and program folders.**

Programs and program folders, for the purpose of this section, shall mean brochures for use at sporting arenas which have, as a part of their operations, whether directly or indirectly, a retail licensed premises. No manufacturer, importer, distributor, or their agent, shall provide, without cost, directly or indirectly, programs or program folders for retail licensees (~~(: Provided, however, That sporting arenas as described above, or their agents))~~ unless the following conditions are met:

(1) A premises holding a sports entertainment facility liquor license may accept bona fide liquor advertising from manufacturers, importers, distributors or their agents, for publication in the program or program folder of the ((sporting arena: Provided further, That such)) sports entertainment facility liquor licensee; and

(2) Advertising is paid for by said manufacturer, importer, distributor or their agent at the published advertising rate for all program or program folder advertisers, including nonliquor advertisers((: And also provided, That such advertising shall carry with it no express or implied offer on the part of the manufacturer, importer, distributor or their agent, or promise on the part of the retail licensee whose operation is directly or indirectly part of the sporting arena, to stock or list any particular brand of liquor to the total or partial exclusion of any other brand)).

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors(; ~~prohibited~~)).** (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor((-), except:



(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, ((That)) such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered ((the retail licensee)) or solicited as an inducement to secure such mention ((by)) of any manufacturer, importer, or ((distributor or their agent, or solicited by the retail licensee or his agent.

(2) RCW 66.28.010 shall also apply to joint advertising insofar as it is relevant)) distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

#### NEW SECTION

**WAC 314-52-097 Financial arrangements between sports entertainment facility licensees and liquor manufacturers, importers, and distributors.** A sports entertainment facility licensee and affiliated business may enter into arrangements with a manufacturer, importer, or distributor for brand advertising or promotional events at the sports entertainment facility under the following conditions:

(1) The facility has a capacity of five thousand or more;

(2) Entities required by WAC 314-12-030 must be placed on the sports entertainment facility license due to financial interest, may receive advertising from liquor manufacturers, importers, or distributors;

(3) The advertising agreement under the provisions of this section must be made by written agreement;

(4) The license must stock and offer for sale other competitive brands of liquor in addition to those of the advertising manufacturer, importer, or distributor;

(5) The agreement may not contain credit of money's worth to be provided by the manufacturer, importer, distributor, or sports entertainment facility licensee;

(6) There will be no exclusionary contracts between a sports entertainment facility licensee and manufacturer, importer, or distributor; and

(7) The advertising manufacturer, importer, or distributor may not exercise undue influence in any manner over the sports entertainment facility licensee's liquor purchasing and sales operations.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-110 Advertising by retail licensees.** (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the ((("licensed trade)) name((")) as it appears on the license issued to the licensee: ((Provided, however, That such))

(a) Words as tavern, cafe, grocery, market, ((food store, food center, delicatessen,)) wine shop, ((beer parlor)) and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees ((of the same trade name)), shall neither be required nor prohibited as part of the trade name in advertisements((:—And provided further, That)).

(b) Advertisements by ((public)) a spirit, beer and wine restaurant licensee((s)) may also ((refer)) be referred to as cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room ((if both are in the same room)).

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," ((two for one drinks,)) "buy one—get one free," or "two for \$ \_\_\_\_\_ ((,—" nor any similar phrase or slogan where the express or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink or quantity of liquor at one time))."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product and in the case of the sale of seasonal goods;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court;

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-113 Brand signs and point-of-sale displays on retail licensed premises.** Manufacturers, importers or distributors may furnish brand signs and point-of-sale material to retailers under the following conditions:

(1) The brand signs and point-of-sale material shall have no value to the retailer except as brand advertisement; such signs as those ((which)) that provide illumination for cash

registers, pool tables, and other parts of the premises, have a functional value and are not authorized. The brand signs and point-of-sale material shall remain the property of, and be the responsibility of, the manufacturers, importers or distributors.

(2) ~~((The term "point-of-sale material" as used herein, shall include such manufacturer, importer or distributor supplied items as display cards, placards, table tents, recipes, display bins, decalcomanias, price cards, shelf strips, product information pamphlets, bottle hangers, matches, scorecards, calendars, and other such brand advertising material for display at the point of sale.~~

~~(3))~~ Giant inflatables, such as inflated beer cans, bottles, ~~((animals,))~~ and banners may be provided as point-of-sale ~~((by manufacturers, importers, or distributors))~~ to retailers for display purposes ~~((on their property))~~ inside the licensed premises, provided the following conditions are met:

(a) ~~((All retail licensees are afforded equal opportunity to display item;~~

~~(b))~~ Novelty items as defined in WAC 314-52-080 are not provided by manufacturers, importers, or distributors to customers in conjunction with the display;

(b) Inflatables are not appealing to children or persons under twenty-one years of age; and

(c) The display shall be removed if objected to by local officials, or if the board ~~((, in its discretion,))~~ finds it contrary to the public interest.

~~((4) Animal mascots and))~~ (3) Costumed individuals representing beer, wine, or liquor manufacturers may be provided as point-of-sale ~~((by manufacturers, importers, or distributors))~~ to retailers for display and promotion purposes on their property, provided the following conditions are met:

(a) The costumed individual is limited to the manufacturer, importer, distributor, or employee thereof and the costumed individual's activities on-premises are limited to socializing with customers and not conducting any activity that the retail licensee would otherwise have to assign employees to;

~~(b) ((All retail licensees are afforded equal opportunity for such displays;~~

~~(e))~~ Novelty items as defined in WAC 314-52-080 and including the purchase of drinks, are not to be provided to customers by the costumed individual in conjunction with such displays;

~~((c))~~ (c) The costumed individual must comply with the regulations regarding lewd and obscene conduct (WAC ~~((314-16-125))~~ 314-11-050);

(d) The costumed individual may not be appealing to children or persons under twenty-one years of age; and

(e) ((If the board finds it contrary to the public interest, it may prohibit the use of the above mentioned activities.)) The board may prohibit the use of costumed individuals if the use is contrary to the public interest.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-52-115 Advertising by clubs—Signs.** (1) Clubs shall not engage in any form of soliciting or advertising which may be construed as implying that the club operates a

~~((public spirit, beer and wine restaurant))~~ premises ~~((, a tavern))~~ open to the public, or that social functions at which club liquor may be consumed, are open to the public ~~((: Provided, however, Circularizing membership shall not be considered advertising, and where))~~. Clubs that provide lunch or dinner to the public ~~((, this))~~ may be advertised ~~((: Provided further, Such advertising))~~ but must specify no liquor service is available.

(2) Clubs and/or their auxiliary organizations may advertise social or other club events to their membership through the public media under the following conditions: ~~((Provided, Such))~~

(a) Advertising ~~((is))~~ must be clearly directed to their membership only ~~((and))~~;

(b) Advertising cannot be construed as implying that the general public is welcome to attend ~~((:~~

(3) Advertising of the club functions by means of placards placed for public viewing shall be governed by the provisions of subsection (2) of this section.

(4)); and

(c) Advertising club functions with placards placed for public viewing shall be governed by (a) and (b) of this subsection.

(3) Advertising may be directed to the public generally in connection with events of special public interest ~~((such as Flag Day, Memorial Day, Veterans Day or such other occasions,))~~ under provisions set forth in WAC 314-40-080(3).

~~((5))~~ (4) A private club may hold a public membership function as outlined in WAC 314-40-040(6). The function must be advertised as a membership drive.

(5) Clubs shall not advertise the events held with the nonclub event endorsement per RCW 66.24.425(3).

(6) Clubs desiring to have radio or television broadcasts originating from their licensed premises may do so ~~((:))~~ provided ~~((, That))~~;

(a) Such broadcasts consist only of entertainment or other matter which is in the public interest and may not contain:

(i) Any announcement of opening or closing hours ~~((:))~~;

(ii) Any invitation to visit the club ~~((:))~~; or

(iii) Any statement which may be construed as advertising or any implication that the club is operated as a public place.

(b) The only reference to the club during such broadcasts shall be limited to a statement at the opening and closing of the program as originating from the club quarters.

#### NEW SECTION

**WAC 314-52-120 Sponsorship of public and civic events.** Manufacturers, importers, and distributors may sponsor public and civic events under the following conditions:

(1) Acknowledgment of the sponsor, either by name, brand, or both, is allowed in any media advertisement where the function recognizes the sponsors of the event. The size of the alcohol industry sponsor acknowledgment may not exceed the size of the event name;

(2) Brand advertising is allowed only in areas at the event where alcohol sales and consumption are conducted; and

(3) There may be no giveaways of promotional items of any kind at events held in public areas, including, but not limited to:

- (a) Street fairs;
- (b) Parks; and
- (c) Government buildings.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-52-020	Use of insignia or reference to liquor control board prohibited—Exception.
WAC 314-52-114	Advertising by retail licensees, offering for sale, or selling beer, wine or spirituous liquor at less than cost—Prohibited—Exceptions.

**WSR 09-16-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed July 30, 2009, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-04-012.

Title of Rule and Other Identifying Information: New WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS? and 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?; and amending WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS? and 415-110-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in SERS?

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on September 9, 2009, at 2:00 p.m.

Date of Intended Adoption: September 10, 2009.

Submit Written Comments to: Sarah White, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 5:00 p.m. on September 9, 2009.

Assistance for Persons with Disabilities: Contact Sarah White, rules coordinator, by September 2, 2009, TDD (360) 664-7291, TTY (360) 586-5450, phone (360) 664-7291.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 1270 (2005) provided members and retirees of the law enforcement officers' and fire fighters' retirement system (LEOFF) plan 2 the option of membership in a public safety employees' retirement system (PSERS), public employees' retirement system

(PERS), school employees' retirement system (SERS), or teachers' retirement system (TRS) eligible position upon returning to work. These rules provide information for retirees, members eligible to retire, and retirees receiving a disability allowance. The rules were created so that they are consistent with each other and the LEOFF rule, WAC 415-104-111, on this topic.

Reasons Supporting Proposal: This bill is in effect and these rules will assist members, retirees, employers, and department staff.

Statutory Authority for Adoption: RCW 41.50.050(5).

Statute Being Implemented: RCW 41.26.500.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation and Enforcement: Cathy Cale, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules have no effect on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not one of the named departments in RCW 34.05.328.

July 30, 2009

Sarah White

Rules Coordinator

#### NEW SECTION

**WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(2) If you are **eligible to retire** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PSERS membership unless you are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

**WAC 415-108-725 If I have retired from another retirement (~~plan~~) system or am eligible to retire, am I excluded from participating in PERS?** (1) If you have **retired** (~~or are eligible to retire~~) from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March ~~(+)~~ 19, 1976; ~~(or)~~

(b) You accrued less than fifteen years of service credit in the other retirement (~~plan~~) system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are eligible to retire from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from (~~any~~) another retirement system (~~administered by the department you can not~~) listed in RCW 41.50.030, you cannot participate in PERS membership unless;

(a) You established membership in PERS prior to March ~~(+)~~ 19, 1976; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

~~((+))~~ (4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) (~~"Retirement plan" - WAC 415-108-010.~~

~~(e))~~) "Service" - RCW 41.40.010.

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

**WAC 415-110-725 If I have retired from another retirement (~~plan~~) system or am eligible to retire, am I excluded from participating in SERS?** (1) If you have **retired** (~~or are eligible to retire~~) from another retirement system authorized by the laws of this state, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement (~~plan~~) system; or

(b) You are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

(2) If you are eligible to retire from another retirement system listed in RCW 41.50.030, you cannot participate in SERS membership unless:

(a) You accrued less than fifteen years of service credit in the other retirement system; or

(b) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from (~~any~~) another retirement system (~~administered by the department~~) listed in RCW 41.50.030, you cannot participate in SERS membership unless you are a LEOFF Plan 2 retiree returning to work in a SERS eligible position and choose to participate in SERS membership. See WAC 415-104-111.

~~((+))~~ (4) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.35.030.

(b) (~~"Retirement plan" - WAC 415-110-010.~~

~~(e))~~) "Service" - RCW 41.35.010.

#### NEW SECTION

**WAC 415-112-546 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in TRS?** (1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(2) If you are **eligible to retire** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless:

(a) You established membership in TRS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in TRS membership unless you are a LEOFF Plan 2 retiree returning to work in a TRS eligible position and choose to participate in TRS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.32.032.

(b) "Service" - RCW 41.32.010.

#### **WSR 09-16-070**

#### **PROPOSED RULES**

#### **CRIMINAL JUSTICE**

#### **TRAINING COMMISSION**

[Filed July 30, 2009, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-045.

Title of Rule and Other Identifying Information: New WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room E-154, Burien, WA 98148, on Wednesday, September 9, 2009, at 10 a.m.

Date of Intended Adoption: September 9, 2009.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7298, by September 2, 2009.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by September 7, 2009, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish a process to grant a basic reserve law enforcement officer a certificate of equivalency for persons who have incurred a break in service as a Washington reserve law enforcement officer and desire to return to service as a reserve law enforcement officer.

Persons who have elected to serve as volunteer reserve law enforcement officers may have a break in service as a reserve law enforcement officer. If a reserve law enforcement officer incurs a break in service in excess of twelve consecutive months, the officer's recognition as a reserve law enforcement officer is considered to have lapsed. This WAC establishes a process of certain conditions that must be met for a person who has been a reserve law enforcement officer and incurred a break in service to have that person's status and recognition as a reserve law enforcement officer reinstated.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Staff in cooperation with the Board on Law Enforcement Training, Standards, and Education (BLETSE), governmental.

Name of Agency Personnel Responsible for Drafting: Tisha Ehret, Burien, Washington, (206) 835-7299; Implementation and Enforcement: Michael D. Parsons, Burien, Washington, (206) 835-7347.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328.

July 30, 2009  
Sonja Hirsch  
Rules Coordinator

## NEW SECTION

**WAC 139-05-825 Basic reserve law enforcement academy certificate of equivalency.** (1) A certificate of equivalency for the basic reserve law enforcement academy shall be issued only to applicants who successfully complete the equivalency process as required by the commission. For

this purpose, the term "process" shall include all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the basic reserve law enforcement equivalency academy. A certificate of completion of equivalent reserve law enforcement training is recognized in the same manner as the certificate of completion of the basic reserve law enforcement academy.

(2) Eligibility for participation in the basic reserve law enforcement equivalency process shall be limited to fully commissioned reserve law enforcement officers and fully commissioned peace officers who have attained basic certification through completion of a basic training program or a basic reserve law enforcement academy/program in this state and have incurred a break in service of more than twelve months but less than thirty-six months. For this purpose, the term "basic training program" does not include any military or any federal training program not otherwise approved by the commission.

(3) Requirements for a person to achieve a certificate of equivalency as a reserve law enforcement officer who has incurred a break in service of:

(a) More than twelve but less than twenty-four months must successfully complete the requirements of RCW 43.101.080(19) and the comprehensive reserve final test proctored by the commission.

(b) More than twenty-four but less than thirty-six months must successfully pass the psychological and polygraph tests, complete the criminal history and background check, and successfully pass the comprehensive reserve final test proctored by the commission.

(c) More than thirty-six months break in service requires the person to attend the basic reserve law enforcement academy.

(4) It shall be the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner and as necessary to ensure that the participation provided by this section is affected.

(5) The decision to request an officer's participation within the equivalency process shall be discretionary with the head of the officer's employing agency, who shall advise the commission of the decision by appropriate notification upon the hiring of the officer. Upon receipt of such notification, the commission shall provide to such agency head all necessary forms and information required for the processing of a request for a certificate of equivalency.

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

(a) A copy of the applicant's certificate of successful completion of an approved basic or reserve academy/program as outlined in subsection (1) of this section.

(b) Proof that a search of state and national criminal history records has been conducted by the employing agency regarding applicant through appropriate submission of the applicant's fingerprints and such search indicated the absence of any conviction of applicant for a felony offense, a misde-

meanor, or gross misdemeanor offense involving moral turpitude.

(c) The candidate has successfully completed a psychological examination and a polygraph.

(d) A copy of the applicant's current and valid driver's license.

(e) A record of the applicant's firearms qualification.

(f) A record that the applicant is current in defensive tactics.

(7) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will issue a certificate of completion of equivalent basic reserve law enforcement training.

**WSR 09-16-087  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**

[Filed August 3, 2009, 8:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-029.

Title of Rule and Other Identifying Information: The department plans to amend chapter 388-828 WAC, Division of developmental disabilities, to ensure that it reflects changes that have been approved in chapter 388-829C WAC, Companion homes, chapter 388-826 WAC, Voluntary placement services, and chapter 388-845 WAC, DDD home and community based waivers, regarding the process DDD uses to determine respite.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094), on September 8, 2009, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 9, 2009.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on September 8, 2009.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS rules consultant, by August 25, 2009, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to amend chapter 388-828 WAC, DDD assessment rules, to ensure that they are consistent with rules.

Reasons Supporting Proposal: Implementation of a standardized tool for determining annual respite allocations will provide clients, providers and the public in general with information that explains how DDD determines the number of respite hours companion home clients may receive annually. The standardized tool will promote consistency in ser-

vices determination so that clients with similar assessed support needs receive similar levels of service.

Statutory Authority for Adoption: RCW 71A.12.010 and 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Eliason, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-2517; Implementation: Shaw Seaman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3443; and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has identified fifty-three clients who receive companion home services. DDD has analyzed the proposed new rules and amendments and has determined that overall costs to companion home providers will be minor, if at all. This is based on a cost-neutral approach to determining annual respite levels that is fair and equitable for all clients receiving companion home services. In addition, DDD is unable to determine if there is a disproportionate impact to companion home providers as all are considered small business. Based on this information, DDD has concluded that preparation of a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-2517, fax (360) 407-0955, e-mail [eliasmr@dshs.wa.gov](mailto:eliasmr@dshs.wa.gov).

July 23, 2009

Stephanie E. Schiller  
Rules Coordinator

NEW SECTION

**WAC 388-828-5990 How does DDD determine your unadjusted respite assessment level if DDD has authorized you to receive companion home services per chapter 388-829C WAC?** DDD determines your unadjusted respite assessment level for companion home services using the following table:

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
0	None	1
0	Low	1
0	Medium	2
0	High	2
1	None	1
1	Low	1
1	Medium	2
1	High	3

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
2 or 3	None	2
2 or 3	Low	2
2 or 3	Medium	2
2 or 3	High	4
4	None	2
4	Low	2
4	Medium	3
4	High	4
5	None	3
5	Low	3
5	Medium	4
5	High	5
6	None	3
6	Low	3
6	Medium	4

If your Protective Supervision Support Level is:	And your behavioral acuity level is:	Then your unadjusted respite assessment level is:
6	High	5

**NEW SECTION**

**WAC 388-828-6010 How does DDD determine your companion home services support score per chapter 388-829C WAC?**

If your unadjusted respite assessment level for companion home services in WAC 388-828-5990 is:	Then your companion home services support score is:
1	98
2	98
3	267
4	436
5	605

**NEW SECTION**

**WAC 388-828-6011 How does DDD determine the number to use in the adjustment of your companion home services support score?** DDD determines the amount of the adjustment for your companion home services support score using the following table:

If you are authorized to receive companion home services per chapter 388-829C and	Your ADL support needs level for the SIS per WAC 388-828-5480			
	None	Low	Medium	High
Your medical acuity level per WAC 388-828-5700	None	288	321	337
	Low	288	321	337
	Medium	288	402	443
	High	288	619	693

Example: If your ADL support needs level is "medium" and your medical acuity level is "medium," the amount of your adjustment is 402.

**NEW SECTION**

**WAC 388-828-6012 How does DDD determine the number of respite hours you may receive annually if you are receiving companion home services?** DDD determines the number of respite hours you may receive annually by adding your companion home services support score in WAC 388-828-6010 to your adjusted companion home services support score in WAC 388-828-6011.

Example: If your companion home services support score is 267 and adjusted companion home services support rating is 343, the number of respite hours you may receive annually is 610.

**AMENDATORY SECTION** (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

**WAC 388-829C-230 Are companion home clients eligible to receive respite?** Companion home clients are eligible to receive respite care to provide intermittent relief to the companion home provider. ~~((The level of respite available to the companion home must be identified in the companion home contract))~~ The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

**WSR 09-16-097**  
**WITHDRAWAL OF PROPOSED RULES**  
**GAMBLING COMMISSION**  
 (By the Code Reviser's Office)  
 [Filed August 4, 2009, 9:11 a.m.]

WAC 230-14-047, proposed by the gambling commission in WSR 09-03-091 appearing in issue 09-03 of the State Register, which was distributed on February 4, 2009, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 09-16-114**  
**PROPOSED RULES**  
**EASTERN WASHINGTON UNIVERSITY**  
 [Filed August 4, 2009, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-060.

Title of Rule and Other Identifying Information: Repealing chapter 172-190 WAC and adopting chapter 172-191 WAC to revise Eastern Washington University (EWU) standards related to the student education records. These rules constitute a major revision in the content and organization of existing rules which are more easily implemented by repealing the existing chapter and adopting the new chapter.

Hearing Location(s): Eastern Washington University, Main Campus, Tawanka Commons, Room 215, Cheney, Washington 99004, on September 11, 2009, at 1:30 p.m.

Date of Intended Adoption: September 11, 2009.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail [tlutey@ewu.edu](mailto:tlutey@ewu.edu), fax (509) 359-7036, by September 10, 2009.

Assistance for Persons with Disabilities: Contact Trent Lutey by September 10, 2009, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules will revise EWU standards for maintaining, protecting, and disclosing student education records.

Reasons Supporting Proposal: These changes are necessary to reflect current administrative practices related to the access of education records per the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. 1232g.

Statutory Authority for Adoption: RCW 28B.35.120.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Eastern Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Laurie Connelly, 214 Showalter Hall, Cheney, WA 99004, (509) 359-2371; Implementation: Lawrence Briggs, 301 Sutton Hall, Cheney, WA 99004, (509) 359-6685; and Enforcement: Erin Morgan, 201 Sutton Hall, Cheney, WA 99004, (509) 359-4971.

No small business economic impact statement has been prepared under chapter 19.85 RCW. New chapter 172-191 WAC does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-191 WAC is not considered a significant legislative rule by Eastern Washington University.

August 4, 2009

Trent Lutey

University Policy Administrator

**Chapter 172-191 WAC**

**STUDENT EDUCATION RECORDS**

NEW SECTION

**WAC 172-191-010 Purpose.** The purpose of this chapter is to establish rules and procedures to comply with the requirements of the Family Educational Rights and Privacy Act of 1974 (FERPA) 20 U.S.C. Sec. 1232g. FERPA provides students with the following rights:

(1) The right to inspect and review their education records;

(2) The right to seek amendment of their education records to correct information which they believe is inaccurate, misleading or otherwise in violation of student privacy rights;

(3) The right to consent to disclosure of personally identifiable information, except for disclosure to school officials with a legitimate educational interest and except to the extent FERPA authorizes disclosure without consent; and

(4) The right to be informed annually of their rights under the act if they are currently in attendance.

The remainder of this chapter details how these rights shall be administered and protected for students of Eastern Washington University.

NEW SECTION

**WAC 172-191-020 Definitions.** The following definitions shall apply in interpreting these regulations:

"Attendance" includes, but is not limited to:

(a) Attendance in person or by paper correspondence, video conference, satellite, internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

(b) The period during which a person is working under a work-study program.

"Biometric record" as used in the definition of personally identifiable information, means a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting.

"Education record" is defined as any record maintained by the institution or by a person acting for the institution that is directly related to the student.

(a) Education records include, but are not limited to:



(i) Official transcripts of courses taken and grades received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.); and

(v) Employment records based on student status are part of the student's education record (e.g., workstudy and graduate assistant teaching).

(b) Education records do not include the following:

(i) Records that are in the sole possession of the maker and are not accessible or revealed to any other person except a temporary substitute for the maker of the record (e.g., private advising notes);

(ii) Law enforcement records created by Eastern Washington University campus police for the purposes of law enforcement, except that records created by another university department remain education records while in the possession of university police;

(iii) Employment records that are maintained in the normal course of business relating exclusively to the individual in that person's capacity as an employee and are not available for any other purpose;

(iv) Health care records on a student that are created or maintained by a health care provider or health care facility, including, but not limited to, a physician, psychiatrist, psychologist or paraprofessional acting in a professional capacity or assisting in connection with the treatment of the student and disclosed only to those individuals providing treatment or a health care provider of the student's choice (see also chapter 70.02 RCW);

(v) Records that only contain information about an individual after he or she is no longer a student at that agency or institution and that are not directly related to the individual's attendance as a student (e.g., alumni records); and

(vi) Grades on peer-graded papers before they are collected and recorded by a faculty member.

"Parent" is defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

"Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier such as the student's Social Security number or student number; student's date of birth, student's place of birth, student's mother's maiden name; biometric record, or other information that alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the university reasonably believes knows the identity of the student to whom the education record relates.

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm, and microfiche.

"Student" is defined as any person who is or has been in attendance at Eastern Washington University for whom the university maintains educational records.

"Student net ID" means a unique identifier that allows students to use the university network domain.

#### NEW SECTION

##### **WAC 172-191-030 Annual notification of rights.**

Eastern Washington University will provide students, who are currently attending, annual notification of their rights as required by the Family Educational Rights and Privacy Act. Notice will be provided through university catalogs, quarterly course announcements, or other publications and media that the university deems appropriate. Copies of the university rules are available through the Washington Administrative Code. The university will make copies available to students, if requested. At a minimum, annual notification will include the following information:

(1) Rights and procedures related to inspection, review, and requests to amend education records;

(2) Rights to consent to disclosure of personally identifiable information contained in student records, except to the extent that such disclosure is legally authorized without consent;

(3) Rights to file a complaint with the department of education concerning alleged failures of the institution to comply with FERPA; and

(4) University policies related to disclosure of education records to school officials with a legitimate educational interest.

#### NEW SECTION

##### **WAC 172-191-040 Right of review and inspection.**

Any student shall have a right, subject to the limitations described below, to inspect and review his or her education records maintained by the university.

(1) The university may require proof of identification such as: A driver's license; university student identification card; or other photographic identification.

(2) The university will comply with a request for access to education records within a reasonable period of time, but not more than forty-five days after it has received the request.

(3) Restrictions:

(a) Financial records of the parents of a student or any information contained therein shall not be made available to the student.

(b) Confidential letters and statements of recommendation, which were placed in a student's education records before January 1, 1975, shall not be made available to the student unless such letters or statements were used for purposes other than those for which they were specifically intended.

(c) Confidential letters and statements of recommendation, which were placed in a student's education records on or after January 1, 1975, shall not be made available to the student if:

(i) The student has waived his or her right to inspect and review those items in accordance with subsection (4) of this section; and

(ii) The letters and statements involved relate to the student's:

- (A) Admission to any educational institution;
- (B) Application for employment; or
- (C) Receipt of an honor or honorary recognition.

(d) The right to review and inspect does not include records made, maintained, or used by the institution that do not constitute an education record.

(e) In the case of any education records relating to a student which also include information regarding another student or students, the right to review and respect is limited to the information related to the student making the request. Responsible university officials will redact any personally identifiable information relating to any other student(s).

(4) Waivers: A student or a person applying for admission may waive his/her right of access to confidential statements described in subsection (3)(c)(ii) of this section.

(a) Such waivers may not be required as a condition for admission or receipt of a service or benefit from the institution.

(b) Such waivers shall apply to recommendations only if:

- (i) The student is, upon request, notified of the names of all persons making confidential recommendations; and
- (ii) Such recommendations are used solely for the purpose for which they were specifically intended.

(c) Waivers must be in writing and signed and dated by the student.

(d) Waivers may be revoked, in writing, by the student; however, the revocation will be effective only for confidential statements or records dated after the revocation.

(5) Destruction of records: Student education records may be destroyed in accordance with the university's approved retention schedule. In no case will any record which is requested by a student for review in accordance with these regulations be removed or destroyed prior to final disposition of the records request.

#### NEW SECTION

**WAC 172-191-050 Obtaining copies of records.** Students may obtain copies of their education records. The office of the registrar is the only office which may issue an official transcript of the student's academic record. Charges for copies shall not exceed the cost normally charged by the university copy center (except in cases where charges have previously been approved for certain specified services).

(1) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(a) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected;

(b) If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts; and/or

(c) If disciplinary action is pending or sanctions are not completed.

(2) The university must provide copies of education records, subject to the provisions of subsection (1) of this section, in the following circumstances:

(a) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(b) When records are released pursuant to a student's consent and the student requests copies; and/or

(c) When the records are transferred to another educational institution where the student seeks to attend or intends to enroll and the student requests copies.

#### NEW SECTION

**WAC 172-191-060 Amendment of records.** If a student believes his/her education records contain information that is inaccurate, misleading or in violation of the student's rights of privacy, the student may ask the university to amend the record. Requests for amendment must be submitted to the registrar's office in writing. The registrar will review the request and may consult other university personnel who participated in creation of the record to determine whether to grant the request for amendment.

(1) If the university decides to grant the student's request, the university shall amend the education record and the registrar will inform the student of the action taken. Such notification will be in writing and will be made within a reasonable time.

(2) If the university decides not to amend the education record as requested, the registrar will notify the student in writing within a reasonable time after receiving the request for amendment. Notification will also inform the student of his/her right to a hearing as detailed in WAC 172-191-070.

(3) If a student wants a hearing, the student must make a written request within ninety days of the date of the denial. The request shall be submitted to the registrar and must identify why the student believes the information contained in the education record(s) is inaccurate, misleading, or in violation of the privacy rights of the student.

#### NEW SECTION

**WAC 172-191-070 Hearings.** Following receipt of a request for a hearing under WAC 172-191-060, the registrar will schedule the hearing. The associate vice-president for enrollment services or his/her designee will act as the hearing officer and will provide the student with written notice of the hearing's date, time and place reasonably in advance of the hearing. The student will be provided an opportunity to present evidence relevant to the contested part of the education record. The student may, at his/her own expense, be assisted or represented by one or more individuals of his/her own choice, including an attorney.

(1) The associate vice-president for enrollment services or his/her designee will render his/her decision in writing within a reasonable period of time following the hearing. The decision of the officer shall be the university's final decision. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision. The associate vice-president for enrollment services or his/her designee cannot have a direct interest in the outcome of the hearing.

(2) If the associate vice-president for enrollment services or his/her designee determines that the record is inaccurate, misleading, or in violation of the privacy rights of the student

and grants the student's appeal, the associate vice-president for enrollment services or his/her designee will amend the education records of the student accordingly and inform the student in writing of his/her decision and of the amendment.

(3) If the associate vice-president for enrollment services or his/her designee determines that the record is accurate, not misleading and not in violation of the privacy rights of the student and denies the student's appeal, the associate vice-president for enrollment services or his/her designee shall notify the student of his/her decision in writing and shall inform them of the right to place a statement in the record commenting on the contested information in the record or stating why he/she disagrees with the decision of the university or both. The university must maintain the statement with the contested part of the record for as long as the record is maintained and must disclose the statement whenever it discloses the portion of the record to which the statement relates.

(4) The appropriateness of official academic grades is not subject to review pursuant to this process.

#### NEW SECTION

**WAC 172-191-080 Disclosure of education records requiring consent.** Students shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from a student's education records, except as provided by WAC 172-191-090. The written consent must:

- (1) Specify the records that may be disclosed;
- (2) State the purpose of the disclosure; and
- (3) Identify the party or class of parties to whom the disclosure may be made.

#### NEW SECTION

**WAC 172-191-090 Disclosures authorized without consent.** The university will use reasonable methods to identify and authenticate the identity of persons to whom it discloses personally identifiable information from education records and will not permit the access to or the release of education records or personally identifiable information other than "directory information" as defined in WAC 172-191-100, without the student's consent, to any party other than the following:

(1) Agencies or organizations requesting information in connection with a student's application for, or receipt of, financial aid if the information is necessary to:

- (a) Determine eligibility for financial aid;
- (b) Determine the amount of financial aid;
- (c) Determine the conditions of financial aid; or
- (d) Enforce the terms and conditions of financial aid.

(2) Authorized representatives of the Comptroller General of the United States, the Attorney General of the United States, the Secretary of the U.S. Department of Education, or state or local authorities requiring access to education records, in connection with the audit or evaluation of a federal or state supported education program or in connection with the enforcement of or compliance with federal legal requirements which relate to such a program.

(3) School officials who have a legitimate educational interest in the records.

(a) A "school official" is:

(i) A person employed by the university in an administrative, supervisory, academic, research, support staff, law enforcement, or health care service position;

(ii) A person serving on the university's board of trustees;

(iii) A student serving on an official university committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(iv) A contractor, consultant, volunteer or other party to whom the university has outsourced to provide a service and/or to assist another school official in conducting official business (examples include, but are not limited to, an attorney, an auditor, a collection agency, or the National Student Clearinghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(b) "Legitimate educational interest" exists if the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit relating to the student or student's family, such as a health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent of a minor student or a nonminor dependent student, as defined in the Internal Revenue Code and upon submission of a copy of the most recent Internal Revenue Service annual tax return showing the student as a dependent.

(5) Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

(6) Organizations conducting studies for, or on behalf of, the university for the purpose of developing, validating, or administering predictive tests; administering student aid programs; or improving instruction, if the studies are conducted in a manner that will not permit the personal identification of students or their parents by persons other than representatives of such organizations who have legitimate interests in the information; such information will be destroyed when no longer needed for the purposes for which it was provided; and the university enters into a written agreement with the organization that specifies the purpose, scope and duration of the study and the information to be disclosed, requires the organization to use personally identifiable information from education records only to meet the purpose(s) of the study as stated in the written agreement; and requires the organization to conduct the study in a manner that does not permit personal identification of parents and students to anyone other than representatives of the organization with legitimate interests, and requires the organization to destroy or return all personally identifiable information within a specified time

period when it is no longer needed for the purposes for which the study was conducted.

(7) Accrediting organizations to carry out accreditation functions.

(8) Persons or entities designated by a judicial order or lawfully issued subpoena, upon the condition that the university makes a reasonable effort to notify the student of all such orders or subpoenas and of its intent to release records in advance of compliance with the order or subpoena, unless:

(a) It is a federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(b) A subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response not be disclosed; or

(c) An ex parte court order obtained by the United States Attorney General (or designee not lower than an Assistant Attorney General) concerning investigations or prosecutions of an offense listed in 18 U.S.C. 2332b (g)(5)(B) or an act of domestic or international terrorism as defined in 18 U.S.C. 2331.

(9) Appropriate persons, including parents of an eligible student, in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(10) Persons who request information that is designated as "directory information."

(11) Victims alleging a crime of violence or a nonforcible sex offense, the final results of a disciplinary proceeding conducted by the university after October 7, 1998, with respect to the alleged crime or offense. Disclosure is permitted regardless of whether the university concluded a violation was committed.

(12) To others, the final results of the disciplinary proceeding when, at its discretion the university believes that disclosure will serve a legitimate educational interest, and determines through a disciplinary proceeding conducted under its student conduct code that the alleged student perpetrator committed a crime of violence or a nonforcible sexual offense that is a violation of the university's rules or policies with respect to such crime or offense. For purposes of this subsection, "final results" means the name of the student perpetrator, the violation committed, and any sanction imposed by the university on that student. Names of other students involved in the violation, such as a victim or witness, will be released only with the written consent of those students.

(13) Parent of a student of the university regarding the student's violation of any federal, state, or local law, or of any rule or policy of the university, governing the use of alcohol or controlled substance, if the student is under the age of twenty-one, and the university had determined that the student has committed a disciplinary violation with respect to that use or possession.

(14) When a parent or eligible student initiates legal action against the university or when the university initiates legal action against the parent or eligible student, the university may disclose to the court any education records of the student that are relevant to the legal action.

(15) Students upon providing evidence sufficient to demonstrate that the requesting individual is in fact the student to whom the records relate such as: A driver's license; a university student identification card; or other photographic identification.

(16) For deceased students, members of the family or other persons with the written approval of the family or representatives of the estate. The request for education records must be accompanied by a copy of the death certificate or obituary. Absent written approval from the family or representative of the estate, only directory information will be disclosed to persons upon request.

(17) The disclosure concerns sex offenders and other offenders required to register under Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, and the information was provided to the educational agency or institution under 42 U.S.C. 14071 and applicable federal guidelines.

(18) The disclosure involves records or information from which all personally identifiable information has been removed.

#### NEW SECTION

**WAC 172-191-100 Directory information.** Directory information is defined to include: Student's name, address, e-mail address, student net identification number, telephone number, date and place of birth, participation in officially recognized activities and sports, weight, height and birth dates of athletic team members; dates of attendance at the university, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

The university may release "directory information" unless the student files a written request restricting the disclosure of the information. A student's election to opt out of directory information disclosures does not prevent the university from disclosing or requiring a student to disclose his/her name, identifier, or university e-mail address in a class in which the student is enrolled.

#### NEW SECTION

**WAC 172-191-110 Right to file a complaint.** Students may file a written complaint with the Family Policy Compliance Office of the U.S. Department of Education concerning alleged failures by the university to comply with the requirements of the Family Educational Rights and Privacy Act or its implementing regulations.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 172-190-010	Purpose.
WAC 172-190-020	Definitions.
WAC 172-190-030	Right of inspection.

WAC 172-190-035	Availability of directory information.
WAC 172-190-040	Access permitted to university and certain other officials without consent.
WAC 172-190-050	Distribution of information to others.
WAC 172-190-060	Notice of rights given under Family Educational Rights and Privacy Act of 1974.
WAC 172-190-070	Requests for access to student records.
WAC 172-190-080	Determination regarding records.
WAC 172-190-090	Review proceeding available.
WAC 172-190-100	Right of students to register objections.

has \$550, could they wager \$500, or, would they be ineligible to place the all-in wager? In other words, does a player have to have \$500 or less to be able to place the all-in wager? Prior to the "all in" wager change, all nonhouse-banked wagers were limited to \$40. By removing the "all in" reference, the rule would revert back to the \$40 limit on all nonhouse-banked wagers.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0282.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because the change would not impose additional costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 3, 2009

Susan Arland

Rules Coordinator

**WSR 09-16-116**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed August 4, 2009, 1:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-027.

Title of Rule and Other Identifying Information: Amending WAC 230-15-135.

Hearing Location(s): Clarion Hotel, 1507 North First Street, Yakima, WA 98901, (509) 248-7850, on October 9, 2009, at 9:00 a.m.

Date of Intended Adoption: October 9, 2009.

Submit Written Comments to: Susan Arland, P.O. Box 42400, Olympia, WA 98504-2400, e-mail SusanA@wsgc.wa.gov, fax (360) 486-3625, by October 1, 2009.

Assistance for Persons with Disabilities: Contact Gail Grate, executive assistant, by October 1, 2009, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change would remove wording that allows higher wagering limits for "all in" wagers in Texas Hold'em poker games. This will put the limit for all poker wagers back to \$40. Effective July 1, 2009, WAC 230-15-135 authorized house-banked licensees the ability to offer up to a \$500 all in wager on the game of Texas Hold'em. An all in wager is defined as a player wagering all of their remaining chips on the current hand. Unfortunately, after the rule passed staff identified a problem that would be created in the wagering structure for Texas Hold'em games. The change allows "all in" wagers, only, to exceed the \$40 poker wagering limit. The rule does not allow players to make call or matching wagers exceeding the \$40 limit. Additionally, the rule is ambiguous as to who is eligible to make an all-in wager. For example, if a player

AMENDATORY SECTION (Amending Order 642, filed 4/10/09, effective 7/1/09)

**WAC 230-15-135 Wagering limits for nonhouse-banked card games.** Card room licensees must not exceed these wagering limits:

(1) **Poker** -

(a) There must be no more than five betting rounds in any one game; and

(b) There must be no more than four wagers in any betting round, for example, the initial wager plus three raises; and

(c) The maximum amount of a single wager must not exceed forty dollars (~~(, except that an all-in wager in the game of Texas Hold'em may not exceed five hundred dollars for house-banked card game licensees meeting the surveillance requirements specified in WAC 230-15-280; and~~

~~(d) An all-in wager is when a player wagers with all of their remaining chips on the current hand);~~

(2) **Games based on achieving a specific number of points** - Each point must not exceed five cents in value;

(3) **Ante** - No more than the maximum wager allowed for the first betting round for any game, except for Panguingue (Pan). The ante may, by house rule:

(a) Be made by one or more players, but the total ante may not exceed the maximum wager allowed for the first betting round; and

(b) Be used as part of a player's wager;

(4) **Panguingue (Pan)** - The maximum value of a chip must not exceed ten dollars. An ante must not exceed one chip. We prohibit doubling of conditions. Players going out may collect no more than two additional chips for going out from each participating player.

**WSR 09-16-119**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Pharmacy)  
[Filed August 4, 2009, 2:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-09-124.

Title of Rule and Other Identifying Information: WAC 246-887-170, amending the section to include carisoprodol in Schedule IV of the Uniform Controlled Substances Act.

Hearing Location(s): Fife Community Center, 2111 54th Avenue East, Fife, WA 98424, on September 17, 2009, at 9 a.m.

Date of Intended Adoption: September 17, 2009.

Submit Written Comments to: Tim Fuller, P.O. Box 47863, Olympia, WA 98504-7863, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by September 3, 2009.

Assistance for Persons with Disabilities: Contact Doreen Beebe by September 3, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule places a drug that is being increasingly abused into the controlled substances Schedule IV. Placing carisoprodol in a controlled substances schedule will increase practitioners knowledge of carisoprodol and reduce abuse.

Reasons Supporting Proposal: The experience with carisoprodol is that it is not only abused, but is documented to be increasingly abused. The data supporting the abuse comes from both national and local drug abuse tracking systems.

Statutory Authority for Adoption: RCW 18.64.005(7), 69.50.201.

Statute Being Implemented: RCW 69.50.201.

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

Name of Proponent: Washington state board of pharmacy, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Fuller, 310 Israel Road S.E., Tumwater, (360) 236-4827; Implementation and Enforcement: Susan Boyer, 310 Israel Road S.E., Tumwater, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tim Fuller, P.O. Box 47863, Olym-

pia, WA 98504, phone (360) 236-4827, fax (360) 236-2901, e-mail [tim.fuller@doh.wa.gov](mailto:tim.fuller@doh.wa.gov).

August 4, 2009  
Susan Leil Boyer  
Executive Director  
Board of Pharmacy

AMENDATORY SECTION (Amending WSR98-02-084, filed 1/7/98, effective 1/7/98)

**WAC 246-887-170 Schedule IV.** The board finds that the following substances have a low potential for abuse relative to substances in Schedule III and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. The board, therefore, places each of the following substances in Schedule IV.

(a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule IV.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-e-dimethylamino-1,2-diphenyl-3-methyl-2 propionyxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Carisoprodol;
- ~~(6)~~ Chloral betaine;
- ~~((6))~~ (7) Chloral hydrate;
- ~~((7))~~ (8) Chlordiazepoxide;
- ~~((8))~~ (9) Clobazam;
- ~~((9))~~ (10) Clonazepam;
- ~~((10))~~ (11) Clorazepate;
- ~~((11))~~ (12) Clotiazepam;
- ~~((12))~~ (13) Cloxazolam;
- ~~((13))~~ (14) Delorazepam;
- ~~((14))~~ (15) Diazepam;
- ~~((15))~~ (16) Estazolam;
- ~~((16))~~ (17) Ethchlorvynol;
- ~~((17))~~ (18) Ethinamate;
- ~~((18))~~ (19) Ethyl loflazepate;
- ~~((19))~~ (20) Fludiazepam;
- ~~((20))~~ (21) Flunitrazepam;
- ~~((21))~~ (22) Flurazepam;
- ~~((22))~~ (23) Halazepam;

- ~~((23))~~ (24) Haloxazolam;  
~~((24))~~ (25) Ketazolam;  
~~((25))~~ (26) Loprazolam;  
~~((26))~~ (27) Lorazepam;  
~~((27))~~ (28) Lormetazepam;  
~~((28))~~ (29) Mebutamate;  
~~((29))~~ (30) Medazepam;  
~~((30))~~ (31) Meprobamate;  
~~((31))~~ (32) Methohexital;  
~~((32))~~ (33) Methylphenobarbital (mephobarbital);  
~~((33))~~ (34) Midazolam;  
~~((34))~~ (35) Nimetazepam;  
~~((35))~~ (36) Nitrazepam;  
~~((36))~~ (37) Nordiazepam;  
~~((37))~~ (38) Oxazepam;  
~~((38))~~ (39) Oxazolam;  
~~((39))~~ (40) Paraldehyde;  
~~((40))~~ (41) Petrichloral;  
~~((41))~~ (42) Phenobarbital;  
~~((42))~~ (43) Pinazepam;  
~~((43))~~ (44) Prazepam;  
~~((44))~~ (45) Quazepam;  
~~((45))~~ (46) Temazepam;  
~~((46))~~ (47) Tetrazepam;  
~~((47))~~ (48) Triazolam;  
~~((48))~~ (49) Zolpidem.

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position or geometric), and salts of such isomers, whenever the existence of such salts, isomers and salts of isomers is possible.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+) - norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Pemoline (including organometallic complexes and chelates thereof);
- (8) Phentermine;
- (9) Pipradrol;
- (10) SPA ((-)-1-dimethylamino-1, 2-dephenylethane.

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine;
- (2) Butorphanol.

**WSR 09-16-124**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 4, 2009, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-080.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for workers' compensation insurance.

Hearing Location(s): Tukwila L&I Building, 12806 Gateway Drive, Tukwila, WA 98168, on September 8, 2009, at 1:30 p.m.

Date of Intended Adoption: September 29, 2009.

Submit Written Comments to: Mr. Ronald Moore, P.O. Box 44140, Olympia, WA 98504-4140, e-mail MOOA235@lni.wa.gov, fax (360) 902-4729, by 5:00 p.m., September 2, 2009.

Assistance for Persons with Disabilities: Contact Bill Moomau at (360) 902-4774 or TTY (360) 902-5797, by September 1, 2009.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has conducted a review of various classifications and determined that certain classifications are in need of revision for purposes of clarification. Revisions are being considered for the following classifications:

- WAC 296-17A-6306 Stores: Furniture, adding a subclassification for businesses providing audio visual services.
- WAC 296-17A-6601 Detective agencies, adding a subclassification for businesses providing process services and legal messenger services.
- WAC 296-17A-5301 Accounting or bookkeeping services, correct reference to establishments engaged in providing process services and legal messenger services to classification 6601.
- WAC 296-17A-6303 Outside sales personnel, NOC messengers, add reference to establishments providing process and legal messenger services are to be reported in classification 6601.

Reasons Supporting Proposal: This rule making will clarify our rules and make them easier to administer and understand.

Statutory Authority for Adoption: RCW 51.16.035, 51.16.100, 51.04.020(1).

Statute Being Implemented: RCW 51.16.035 and 51.16.100.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Patti Phillips/Julia Ehr, Tumwater, (360) 902-4723/4799; Implementation: Ronald C. Moore, Tumwater, (360) 902-4748; and Enforcement: Robert Malooly, Tumwater, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. In this case, the agency is exempt from conducting a small business economic impact statement (SBEIS) since the proposed rules set or adjust fees or rates to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v).

A cost-benefit analysis is not required under RCW 34.05.328. In this case, the agency is exempt from conducting a cost-benefit analysis since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.328 (5)(b)(vi) and because the content of the rules is specifically dictated by statute described in RCW 34.05.328 (5)(b)(v). Preparation of an SBEIS and the evaluation of probable costs is required when a rule proposal has the potential of placing a more than minor economic impact on business. There are no significant costs as part of this rule making.

August 4, 2009  
Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-5301 Classification 5301.**

**5301-10 Accounting or bookkeeping services**

Applies to establishments engaged in providing general accounting or bookkeeping services to others. Types of services contemplated by establishments subject to this classification include, but are not limited to, auditing, tax preparation, medical or dental claims processing and billing, and/or advisory services. This classification includes all employments such as, but not limited to, clerical office, outside sales, and personnel who travel from one office to another.

This classification excludes establishments engaged primarily in management consultant services that are not otherwise classified, which are to be reported separately in classification 5301-12.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-11 Law firms**

Applies to establishments engaged in providing legal services to others. Law firms may specialize in one or more areas of law. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

**Special note:** This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-12 Management consultant services, N.O.C.**

Applies to establishments engaged in providing management consulting services not covered by another classification (N.O.C.). Management consultants typically will observe and analyze organizational structures, work processes or work flows, mail distribution, computer or communication systems, and planning or development of related business needs. After a thorough analysis, consultants usually prepare a written report for the customer which identifies problem areas and/or recommends improvements to processes or equipment. Consultants may remain to oversee the implementation of the recommended improvements. Consultants subject to this classification do not sell any product they have recommended although they may act as an agent for their client in purchasing the product. Consulting projects vary from client to client depending upon the contract. Included within this classification are businesses that provide similar consultative services such as, but not limited to, advertising agencies, employer representative organizations, public relations companies, mortgage brokers and financial advisers who do not make purchases on behalf of their clients. This classification includes clerical office staff, outside sales personnel and other staff who travel from one office to another.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**5301-13 Credit bureaus; collection agencies**

Applies to establishments that are licensed to provide collection and/or credit investigation services to others. Services include, but are not limited to, the collection of NSF checks or delinquent debts owed to clients of the collection agency and checking the credit backgrounds of their client's potential customers. If debts are not collected, the service agency may initiate legal proceedings against the debtor. This classification includes clerical office and outside sales personnel, and other staff who travel from one office to another ~~(and process servers, although collection agencies subject to this classification generally employ process servers of other businesses to deliver legal documents)~~.

This classification excludes establishments engaged in providing process ~~((serving))~~ and legal messenger services which ~~((may))~~ are to be reported separately in classification ~~((6303 provided all the conditions of the general reporting rules covering standard exception employees have been met))~~ 6601.

**5301-14 Employment agencies**

Applies to establishments that are licensed to provide employment services for others. Clients of employment agencies may be persons seeking employment or companies looking for employees. Employment agencies usually conduct preliminary interviews with candidates for positions prior to referring them to their client companies for interviews. Generally, establishments subject to this classifica-



tion place people in permanent positions. This classification includes clerical office and outside sales personnel, and staff who travel from one office to another.

This classification excludes employees of a temporary help agency who are assigned to work in the administrative or branch offices of the agency who are to be reported separately in classification 7104 and employees of a temporary help agency who are assigned on a temporary basis to its customers who are to be reported separately in the appropriate temporary help classification.

#### **5301-15 Court reporting services**

Applies to establishments engaged in providing court reporting services to others. Court reporters record verbatim testimony presented in court proceedings, depositions, public hearings or meetings. The most frequently used method to record testimony is by stenotype machine, although it may be recorded by voice recording on audio tape, or by manual shorthand. Transcription of the recorded material may be performed by the court reporter or by "note readers" or typists. The majority of court reporters today use computer-aided transcription systems. Court reporters may also offer notary public services for their clients. This classification includes clerical office and staff who travel from one office to another.

#### **5301-16 Service and professional organizations**

Applies to establishments engaged in protecting or furthering the interest of their members and/or the general public. Many of these operate as nonprofit organizations. Service and professional organizations may perform one or many of the following activities: Maintain a membership directory; collect membership dues; publish a newsletter; sponsor educational training programs; administer certification tests; provide job placement assistance; award scholarships; offer insurance programs; research and interpret local, state, and federal regulations and apprise members of the results; manage promotional marketing programs; organize fund raising campaigns; perform charitable community services; sponsor athletic leagues and tournaments; host conventions; disburse funds; perform collective bargaining; arbitrate disputes; provide counseling, adoption, and advocacy services; lobby the legislature; compile, review, and disseminate informational data; operate a tourist information center; issue vehicle license registrations, plates, decals, and certificates of title. Also included in this classification are Economic Development Councils, Boards, or Associations. These nonprofit organizations provide economic consulting services and related statistics to government and industry in the promotion of economic stability, and recruit businesses who will create jobs and provide loans from the grant funds they manage. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

This classification excludes labor unions and employee representative associations which are to be reported separately in classification 6503, and the collection of donated items by truck which is to be reported separately in classification 1101.

**Special note:** If a charitable organization subject to classification 5301 operates a retail store for the sale of donated items, the collection of those items by truck, and all store

operations, are to be reported separately in classification 6504.

#### **5301-18 Telephone answering services**

Applies to establishments engaged in providing telephone answering services for others. Customers include, but are not limited to, medical professionals, attorneys, private businesses, and individuals. Most answering services today use computerized communications systems to identify company names when answering calls for various companies, obtain correct information about the company to respond to questions, record and relay accurate messages in a timely manner. Related services often offered by telephone answering service companies include, but are not limited to, voice mail or paging, rental of office space, telemarketing, dispatching, monitoring alarm systems, placing reminder calls, and scheduling appointments for customers. This classification includes clerical office personnel and staff who travel from one office to another.

#### **5301-19 Travel agencies**

Applies to establishments engaged in providing travel arrangement services for others. Travel agencies coordinate all types of travel arrangements for their clients through air, cruise, train, or bus lines, hotels, motels, or resorts, car rental agencies, travel insurance companies, and related travel providers. Services vary and could include delivery of tickets and itineraries to clients, booking reservations and selling tickets for tours, excursions, or other entertainment events, or arrangement of special needs for disabled or elderly travelers. This classification includes clerical office and sales staff who travel from one office to another.

#### **5301-21 Word processing or secretarial services**

Applies to establishments engaged in providing word processing or secretarial services to others. Services include, but are not limited to, desktop publishing, dictation and transcription services, typing/compiling reports, proposals, resumes, or correspondence, sending faxes, and making copies of documents. A pickup and delivery service may be offered. This classification includes clerical office and outside sales personnel who travel from one office environment to another.

**Special note:** This classification is limited to employers engaged in such services being provided to the general public. This is a services only classification and does not include retailing or store operations, nor is this classification to be assigned to employers setting up separate business operations to manage other commonly owned or operated business undertakings unless coincidentally the other operations are also subject to this classification.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6303 Classification 6303.**

##### **6303-00 Outside sales personnel, N.O.C.; messengers**

Applies to those employees whose job duties and work environment meet *all* the conditions of the general reporting rules covering outside sales personnel, and who are not covered by another classification (N.O.C.) assigned to the

employer's account. Duties of outside sales personnel contemplated by this classification are limited to soliciting new customers by telephone or in person, showing, selling, and explaining products or services, servicing existing accounts, completing correspondence, placing orders, performing public relations duties, and estimating. Duties of messengers are limited to delivering interoffice mail, making deposits, and similar duties that are exclusively for the administration of the employer's business.

This classification excludes the delivery of products or merchandise or the stocking of shelves which is to be reported separately as applicable; the demonstration or delivery of machinery or equipment which are to be reported separately as applicable, establishments engaged as collection agencies or public relations agencies which are to be reported separately in classification 5301; establishments engaged in providing inspection and valuations exclusively for insurance companies which are to be reported separately in classification 4903; establishments engaged in process and legal messenger services which are to be reported separately in classification 6601.

**Special note:** When considering this classification care must be taken to look beyond titles of employees. Employees with occupational titles such as, but not limited to, collectors, counselors, consultants, or appraisers may or may not qualify for this classification. This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met.

### **6303-03 Insurance sales personnel and claims adjusters**

Applies to insurance sales personnel and claims adjusters with outside duties. Duties of employees subject to this classification are limited to selling insurance policies at their place of business or at the client's home, or going to the scene of an accident or catastrophe to assess damage. Work may be performed within an office or away from the employer's premises.

**Special note:** Individuals performing duties as an agent, broker, or solicitor (and hold a license as issued by the office of the insurance commissioner) are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010, 48.17.020, and 48.17.030. To elect voluntary coverage these individuals must submit a completed optional coverage form to the department.

### **6303-21 Home health care services: Social workers and dietitians**

Applies to social workers and dietitians employed by home health care service establishments who provide care for handicapped individuals. Duties of these employees include teaching physically or developmentally disabled individuals in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor. This classification also includes dietitians, sometimes called nutritionists, who usually are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, including current food intake, medical background, family history, currently prescribed medications, and social and psychological needs, then develops, a

food plan to meet the patient's needs. Employees subject to this classification do no cooking.

This classification excludes nursing and home health care services which are to be reported separately in classification 6110; therapy services which are to be reported separately in classification 6109; domestic servants who are to be reported separately in classification 6510; and chore workers who are to be reported separately in classification 6511.

**Special note:** This is a restrictive classification; the qualifying factor is that all the conditions of the general reporting rules covering standard exception employees have been met. *This classification is not to be assigned to any account that does not also have classification 6110 and/or 6511.*

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

### **WAC 296-17A-6601 Classification 6601.**

#### **6601-00 Detective agencies**

Applies to establishments engaged in providing investigative and related services for others. Services include, but are not limited to, investigating corporate embezzlement and fraud, employee theft, insurance fraud, missing person cases, matrimonial or child custody disputes, conducting background checks, tracking and apprehending fugitives, monitoring burglar or fire alarm systems, or provide polygraph testing or fingerprinting services. Investigative methods include checking public records, conducting interviews, surveillance, and undercover operations. As a general rule, the detective agency provides clients with a final report, which includes documentation, photographs, or videotapes.

This classification excludes establishments engaged in providing customer shoplifting surveillance within retail stores which are to be reported separately in classification 6601-01 and surveillance employees hired as direct employees of a nondetective or security agency who are to be reported separately in the classification applicable to the establishment.

#### **6601-01 Merchant police or patrol**

Applies to establishments engaged in providing security services to shopping centers, malls, business parks, banks and other businesses. Services include, but are not limited to, monitoring parking lots and garages, maintaining public security in malls, hospitals, and banks, providing surveillance for theft or shoplifting, and monitoring alarm systems.

This classification excludes detective agencies which are to be reported separately in classification 6601-00 and security guard services which are to be reported separately in classification 6601-02.

#### **6601-02 Security guard agencies**

Applies to establishments engaged in providing general security guard services for clients such as airports, commercial, industrial, residential and governmental facilities. Services include, but are not limited to, protecting persons or buildings, responding to fire or burglar alarms, protecting and/or transporting executives, providing security at strikes, and conducting electronic sweeps. The clients' security systems may be connected to a central security system of the

security guard agency, where employees of the security guard agency monitor the client's systems and notify the appropriate authorities if necessary. As a general rule, security guards, do not have police powers.

This classification excludes security guards at logging sites who are to be reported separately in classification 6601-03 and security guards at construction sites who are to be reported separately in classification 6601-04 provided the conditions in the special exception section of the general rules have been met.

#### **6601-03 Security guards at logging sites**

Applies to employees of logging contractors or landowners who are employed as security guards to maintain security at logging sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at logging sites.

#### **6601-04 Security guards at construction sites**

Applies to employees of construction contractors or landowners who are employed as security guards to maintain security at construction sites by preventing, deterring and detecting crime and/or fires. Security guards subject to this classification are limited to employment at the site only during those hours that the employer is not conducting any other operations at the site and may have no other duties during their shift as security guard. This classification also applies to establishments that contract to provide security guards at construction sites.

#### **6601-05 Armored car services**

Applies to establishments engaged in armored car services which transport cash or valuables for businesses such as, but not limited to, banks, supermarkets, and jewelry stores to other destinations. Also included are armored car services which collect or deposit money into or from automatic teller machines.

#### **6601-06 Crowd control services**

Applies to establishments engaged in providing crowd control services. Crowd control services is a growing field and may include, but not be limited to, crowd management at sporting events, race tracks, live concerts, rallies, conventions, rodeos, and fairs. This classification includes parking lot staff, and rule enforcement employees such as uniformed or plain clothes security guards who maintain order as well as providing personal protection.

This classification excludes theatre ushers, inside ticket takers, set up crews and stagehands who are to be reported separately in classification 4504.

#### **6601-07 Process/legal messenger services**

Applies to establishments engaged in providing process services and legal messenger services for others. Process servers deliver legal documents such as summonses, complaints, subpoenas and writs to individuals. A legal messenger delivers legal papers between legal representatives and the courts. Services may also include checking public

records, surveillance work, and conducting interviews to locate recipients of legal documents. They will provide clients with a final report of service or nonservice on the recipient.

This classification excludes errand and parcel delivery services that are to be reported separately in classification 1101.

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6306 Classification 6306.**

#### **6306-00 Stores: Furniture - wholesale or retail**

##### **Stores: Billiard or pool table - wholesale or retail**

Applies to establishments engaged in the wholesale or retail sale of new, used, or antique household furniture. This classification also includes the sale of related items such as, but not limited to, lamps, bedding, pillows, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with a furniture store operation. This classification includes the delivery and the incidental repair of merchandise sold. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and is readily available for sale and delivery to the customer. The contract installation of any merchandise which must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, a furniture store could bid on a job to carpet all units of an apartment complex. If the carpet is ordered from the factory as opposed to carpet carried at the store and in the stores inventory, then the installation is to be reported separately in classification 0502. This classification also applies to stores that sell billiard or pool tables.

**Special note:** Care should be exercised when considering this classification for antique or used furniture stores since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

#### **6306-01 Stores: Furniture - rental**

Applies to establishments engaged in the rental of new, used, or antique household furniture. This classification also includes the sales of related items such as, but not limited to, lamps, bedding, pillows, framed pictures, art pieces and

sculptures when sold in connection with a furniture rental store operation. This classification includes the delivery and the incidental repair of merchandise rented. Incidental repair in this classification is limited to such activities as the repair or cleaning of upholstery or fixing a small scratch on a table. This classification also applies to establishments that provide rent-to-own purchasing options, and to establishments engaged in the sale or rental of hospital beds, motorized wheelchairs and similar patient appliances.

**Special note:** Care should be exercised when considering this classification for an antique or used furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing, or upholstery work which are to be reported separately in the applicable service or repair classification.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

#### **6306-02 Stores: Appliance - wholesale or retail**

Applies to establishments engaged in the wholesale or retail sale of gas, electric, or propane household appliances. Household appliances include, but are not limited to, refrigerators, freezers, stoves, range tops, trash compactors, washing machines, clothes dryers, television consoles, big screen televisions, and television antennas or satellite dish receiving units. Appliance stores will routinely carry smaller appliances which are generally referred to as counter top units which include, but are not limited to, mixers, blenders, microwave ovens, toasters and espresso machines and are included in this classification when sold in connection with the appliance store operation. This classification covers the sale of primarily new appliances although establishments subject to this classification accept trade-ins and sell some used appliances. Also included is the incidental repair of appliances sold by the appliance store, parts departments employees, and the delivery of products sold. The contract installation of any merchandise which must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an appliance store could bid on a job to supply appliances for all units of an apartment complex. If the appliances are ordered from the factory as opposed to items carried at the store and in the stores inventory then the installation is to be reported separately in classification 0607. Establishments engaged in the sale of commercial appliances may be assigned to this classification provided such establishments operate a bonafide store operation. Generally, however, commercial appliances such as those used to equip bakeries and restaurants are factory ordered items which are made to a customer's specifications from a manufacturer's representative.

**Special note:** Care should be taken when considering this classification for an antique or used appliance store since such establishments are primarily engaged in reconditioning appliances (service and repair) for resale and are to be reported separately in classification 0607.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

#### **6306-03 Stores: Piano or organ - wholesale or retail**

Applies to establishments engaged in the wholesale or retail sale of new pianos and organs. This classification includes all operations associated with the store including service, repair, and delivery. It is common for stores subject to this classification to carry other musical instruments such as, but not limited to, guitars, drums and wind instruments as well as provide instructions on the use of instruments.

This classification excludes establishments engaged exclusively in piano tuning which are to be reported separately in classification 4107; stores that sell musical instruments other than pianos or organs which are to be reported separately in classification 6406; and establishments engaged in the reconditioning of organs and pianos accompanied by the related sales of reconditioned pianos and organs which are to be reported separately in classification 2906.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

#### **6306-06 Stores: Office furniture - wholesale or retail**

Applies to establishments engaged in the wholesale or retail sale of new, used, or antique office furniture. This classification also includes the sales of related items such as, but not limited to, lamps, floor and window coverings, framed pictures, art pieces and sculptures when sold in connection with an office furniture store operation. This classification includes the delivery of furniture and related items, and the incidental repair of office furniture items sold by the office furniture store such as upholstery repair and cleaning. The installation of carpet and window coverings may be included in this classification if such merchandise is part of the store's inventory and readily available for sale and delivery to the customer. The contract installation of any merchandise that must be ordered from a factory or distributor to fulfill the terms of contract is to be reported separately in the classification applicable to the work being performed. For example, an office furniture store could bid on a job to supply modular desk units for a large office complex. If the desk units are ordered from the factory as opposed to units carried at the store and in the stores inventory, then the installation is to be reported separately in classification 2002.

**Special note:** Care should be exercised when considering this classification for an antique or used office furniture store since such establishments may actually be a furniture refinishing business or an upholstery shop which are to be reported separately in the appropriate classification. Repair work covered by this classification (6306) is limited to such activities as fixing a small scratch on a table, replacing a piece of glass or mirror in a china or curio cabinet, sewing on

a button or adjusting a reclining chair mechanism. Classification 6306 should not be assigned to an establishment that is engaged in furniture refinishing or upholstery work.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

### **6306-07 Audio/visual equipment rental and event services**

Applies to businesses engaged in renting audio/visual equipment and providing temporary setup or "staging" services at hotels, theaters, events, or businesses. Services may include, but are not limited to, the design, cost estimate, rental, and setup of audio/visual equipment such as projectors, cameras, videos, screens, microphones, sound systems, mixers, lights, or grip equipment. These businesses usually store the equipment in their warehouse, stage it in a loading area, load and transport it in a van or truck, or the customer may pick it up. Employees may be stationed at a customer's site, such as a hotel, and equipment may be stored at the customer's site for daily setup. Services provided are usually scheduling and coordination, delivery, equipment setup, testing, cleaning, and repair. Employees may operate equipment during an event or help troubleshoot problems, or return at the end of the event to disassemble the equipment and return it to the warehouse. Businesses in this classification may also offer sales of accessories or other new and used equipment. Repair is usually limited to the businesses' own equipment, but minimal repair services for customers are included in this classification.

This classification excludes:

- Contractors with a limited energy electrical license providing low voltage wiring with installation of audio/visual equipment, who are to be reported in classification 0608.
- Retail stereo component or camera stores which also rent, but provide no staging services, who are to be reported in classification 6406.
- Firms providing equipment setup or repair only, who are to be reported in classification 0607.
- Musicians and their own employees performing stage setup, who are to be reported in classification 6605.
- Sponsors of exhibitions or shows who are to be reported in classification 6208.

**Special note:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

**WSR 09-16-126**  
**PROPOSED RULES**  
**SKAGIT VALLEY COLLEGE**

[Filed August 5, 2009, 8:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-019.

Title of Rule and Other Identifying Information: Chapter 132D-120 WAC, Code of student conduct and grievance policy of Skagit Valley College.

Hearing Location(s): Skagit Valley College, Library, Czarna Collins Room, 2405 East College Way, Mount Vernon, WA 98273, on September 9, 2009, at 1:00 - 2:00 p.m.

Date of Intended Adoption: September 9, 2009.

Submit Written Comments to: Alan Muia, Interim Dean of Student Services, 2405 East College Way, Mount Vernon, WA 98273, e-mail alan.muia@skagit.edu, fax (360) 416-7890, by September 4, 2009.

Assistance for Persons with Disabilities: Contact Eric Anderson by September 4, 2009, TTY (360) 416-7718 or (360) 416-7818.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify disciplinary and grievance procedures; to update language in guidelines and sanctions.

Reasons Supporting Proposal: This change will clarify disciplinary and grievance procedures and will update the language in guidelines and sanctions.

Statutory Authority for Adoption: RCW 28B.50.140.

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: This change will clarify disciplinary and grievance procedures and will update the language in guidelines and sanctions.

Name of Proponent: Skagit Valley College, Community College District No. 4, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Alan Muia, 2405 East College Way, Mount Vernon, WA 98273, (360) 416-7633.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

August 4, 2009

Lisa Radeleff

Executive Assistant

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-020 Definitions.** As used in this chapter, the following words and phrases shall be defined as follows:

(1) "Academic dishonesty" means cheating, plagiarism, fabrication, lying, bribery, threat, aid of academic dishonesty, and other dishonesty (~~(relating to academic work)~~) in relation to academic work both in onground and on-line courses.

(a) Plagiarism: Presenting as one's own, intentionally or not, someone else's words, ideas, conclusions, images, or data, without specific acknowledgment. This includes, but is not limited to, presenting the source's language without quotation marks (with or without citation); paraphrased language that is not cited; and/or language that is cited, but insufficiently paraphrased.

(b) Cheating:

(i) Using unauthorized assistance, notes or study aids in completing assignments, taking quizzes, tests, or exams;

(ii) Allowing another party to do one's work/exam and turning in the work/exam as one's own;

(iii) Submitting the same or similar work in more than one course or while repeating the same course without permission from the course instructors;

(iv) The acquisition, without permission, of a test or other academic material belonging to the college.

(c) Fabrication: Falsification or creation of data, research, or resources, or altering a graded work without the prior consent of the course instructor.

(d) Lying: Deliberate falsification in written or verbal form.

(e) Bribery: Providing, offering, or taking rewards in exchange for a grade, an assignment, or the aid of academic dishonesty.

(f) Threat: An attempt to intimidate a student, staff, or faculty member for the purpose of receiving an unearned grade or in an effort to prevent the reporting of a conduct violation.

(g) Abetting academic dishonesty: Intentionally facilitating any of the above behaviors.

(2) "Alcoholic beverages" are beer, wine and hard liquor as defined in RCW 66.04.010(15) as now law or hereafter amended.

(3) ~~(The term "cheating" includes, but is not limited to:~~

~~(a) Use of any unauthorized assistance in taking quizzes, tests or examinations;~~

~~(b) Dependence upon the aid of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments; or~~

~~(c) The acquisition, without permission, of a test or other academic material belonging to a member of the college faculty or staff.~~

(4)) "College" means Skagit Valley College, and any other community college centers or facilities established within Community College District No. 4.

~~((5))~~ (4) The term "college official" includes any person employed by the college or any member of the college board of trustees, performing administrative or professional responsibilities.

~~((6))~~ (5) The term "college premises" includes all land, buildings, facilities and other property in the possession of, or owned, used or controlled by the college (including adjacent streets and sidewalks).

~~((7))~~ (6) "Controlled substance" includes any illegal drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

~~((8))~~ (7) "Demonstrations" shall mean any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or group of persons.

~~((9))~~ (8) The ~~((director))~~ dean of students ~~((life))~~ is that person designated by the college president to be responsible for the administration of the code of conduct.

~~((10))~~ (9) "Faculty" includes any full-time or part-time academic employee of the district whose assignment is one of a combination of instruction, counseling or library services.

~~((11))~~ (10) A ~~((judicial advisor))~~ student conduct administrator is a college official authorized on a case-by-case basis to impose sanctions upon students found to have violated this code of conduct. The ~~((director))~~ dean of students ~~((life))~~ will serve as the ~~((judicial advisor))~~ student conduct administrator or may appoint another ~~((trained))~~ college official to perform that function if he/she perceives that it would be in the best interest of any of the parties involved in a case. A ~~((judicial advisor))~~ student conduct administrator may serve as the sole member, or one of the members, of a judicial body. Nothing shall prevent the ~~((director))~~ dean of students ~~((life))~~ from authorizing the same ~~((judicial advisor))~~ student conduct administrator to impose sanctions in all cases.

~~((12))~~ (11) The term ~~((judicial body))~~ student conduct board means any person or persons authorized to determine whether a student has violated the code of conduct and to recommend imposition of sanctions. ~~((Judicial bodies))~~ Student conduct boards will be selected annually through the college's authorized committee selection process.

~~((13))~~ (12) The term "may" is used in the permissive sense.

~~((14))~~ (13) The term "member of the college community" includes any person who is a student, faculty member, college official, or any other person employed by the college. A person's status in a particular situation shall be determined by a ~~((judicial advisor))~~ student conduct administrator.

~~((15))~~ (14) The term "organization" means any number of persons who have complied with the formal requirements for college recognition.

~~((16))~~ The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person, without full and clear acknowledgment. It also includes the unacknowledged use of materials such as term papers or other academic material prepared by a person other than the submitting student.

~~((17))~~ (15) The term "respondent" means any student accused of violating this code of conduct.

~~((18))~~ (16) The term "sexual harassment" includes, but is not limited to, unwanted sexual advances; requests for sexual favors; and other verbal and physical conduct which interferes with learning, or creates a hostile or offensive environment for one of the parties.

~~((19))~~ (17) The term "shall" is used in the imperative sense.

~~((20))~~ (18) "Student," unless otherwise qualified, shall mean and include any person who is registered for classes at the college. Persons who are not officially enrolled for a particular term, but who have a continuing relationship with the college, are considered "students."

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-030 Jurisdiction of the college.** (1) Scope. This code shall apply to every student whenever the student is present upon or in any college premises and when-

ever the student is present at or engaged in any college-sponsored activity held on or in noncollege facilities.

(2) Remedies not exclusive. The remedies provided for in this code are not exclusive. Seeking or obtaining any remedies under this code is not intended to bar the college, the complainant, or any other person or entity from seeking or obtaining such other remedies as may be available under other college policies, or in any other forum under applicable civil or criminal law.

(3) Trespass. The ~~((director))~~ dean of students ~~((life))~~ or his or her designee(s) shall have the authority and power to prohibit the entry or withdraw the license or privilege of any person or group of persons to enter into or remain in any college property or facility. Such power and authority may be exercised to halt an event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual who disobeys a lawful order given by the ~~((director))~~ dean of students ~~((life))~~, or his or her designee(s), shall be subject to disciplinary action and/or charges of criminal trespass.

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-040 Disciplinary authority.** (1) ~~((Judicial bodies))~~ Student conduct boards shall be selected annually via the standing committee selection process and approved by the college president. The ~~((director))~~ dean of students ~~((life))~~ shall determine which ~~((judicial body))~~ conduct board or ~~((judicial advisor))~~ student conduct administrator shall be authorized to hear each case.

(2) The ~~((director))~~ dean of students ~~((life))~~ may develop policies and procedures for the administration of the ~~((judicial program))~~ student conduct program and for the conduct of hearings which are consistent with the provisions of the Skagit Valley College code of student conduct. Each complainant and respondent shall be given a copy of any written procedural rules prior to any ~~((judicial))~~ student conduct hearing.

(3) Decisions made by a ~~((judicial body))~~ student conduct board and/or ~~((judicial advisor))~~ student conduct administrator shall be final, pending the appeal process provided within this code.

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-050 Violations.** Any student found to have committed, or aided or abetted others to commit, any of the following violations is subject to the disciplinary sanctions outlined in this chapter:

(1) Assault, reckless endangerment, physical abuse, harassment, coercion and/or other conduct which threatens or endangers the health or safety of any person.

(2) Disorderly, lewd, indecent or other behavior which breaches the peace, interferes with the rights of others or which obstructs or disrupts teaching, research, administrative functions or other college-authorized activities.

(3) Failure to comply with orders or directions of college officials or law enforcement officers acting in performance of their duties, and/or failure to identify oneself to these persons when requested to do so.

(4) Participation in a campus demonstration or other activity which disrupts the normal operations of the college and infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus or at college-sponsored activities.

(5) Acts of dishonesty ~~((including, but not limited to))~~ in on-ground and on-line courses including, but not limited to, the following:

(a) Cheating, plagiarism, ~~((or other forms of academic dishonesty))~~ fabrication, lying, bribery, threat, aid of academic dishonesty, and other dishonesty relating to academic work.

(b) Furnishing false information to any college official, faculty member or office.

(c) Forgery, alteration or misuse of any college document, record or instrument of identification.

(d) Tampering with the election of any college-recognized student organization.

(6) Attempted or actual theft of, and/or damage to, property of the college or property of a member of the college community or other personal or public property.

(7) Failure to follow the reasonable instructions of faculty members, thereby infringing upon the rights and privileges of other members of the college community.

(8) Possession or unauthorized use of college equipment and supplies including, but not limited to, converting college equipment or supplies for personal gain or use without proper authority.

(9) Abuse of the ~~((judicial))~~ student conduct system including, but not limited to:

(a) Failure to obey the summons of a ~~((judicial body))~~ student conduct board or college official.

(b) Falsification, distortion, or misrepresentation of information before a ~~((judicial body))~~ student conduct board.

(c) Disruption of, or interference with, the orderly conduct of a ~~((judicial))~~ student conduct proceeding.

(d) Knowingly initiating a ~~((judicial))~~ student conduct proceeding without cause (i.e., filing a false report).

(e) Attempting to discourage an individual's proper participation in, or use of, the ~~((judicial))~~ student conduct system.

(f) Attempting to ~~((improperly))~~ influence improperly the impartiality of a member of a ~~((judicial body))~~ student conduct board prior to, and/or during, the course of a ~~((judicial))~~ student conduct proceeding.

(g) Harassment (verbal or physical) and/or intimidation of a member of a ~~((judicial body))~~ student conduct board prior to, during, or after the course of a ~~((judicial))~~ student conduct proceeding.

(h) Failure to comply with the sanction(s) imposed under the code of conduct.

(i) Influencing or attempting to influence another person to abuse the ~~((judicial))~~ student conduct system.

(10) Falsely setting off, or otherwise tampering with, any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(11) Unlawful discrimination based on, but not limited to, race, ethnicity, national origin, ancestry, creed, color, gender (including sexual harassment), marital/parental status, sexual orientation, age, religion, and sensory, mental, or physical disability.

(12) Refusal to provide positive identification (e.g., valid driver's license or state identification card) in appropriate circumstances to any college employee in the lawful discharge of that employee's duties.

(13) Entering any administrative or other employee office or any locked or otherwise closed college facility in any manner, at any time, without authority or permission of the college employee or agent in charge thereof.

(14) Smoking in college vehicles or on college premises outside of designated smoking areas.

(15) Use, possession, distribution or being demonstrably under the influence of narcotics or other controlled substances, except as expressly permitted by law.

(16) Use, possession, distribution or being under the influence of alcoholic beverages, except as expressly permitted by law and college regulations.

(17) Possession of firearms, explosives, other weapons, or dangerous chemicals on college premises or at college-sponsored or supervised activities, unless approved by the president of the college or his/her designee.

(18) Theft or other abuse of computer time including, but not limited to:

(a) Unauthorized entry into a file to use, read, or change contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Unauthorized use of another individual's identification and/or passwords.

(d) Use of computing facilities to interfere with the work of another student or college official.

(e) Use of computing facilities to send obscene or abusive messages.

(f) Use of computing facilities that interferes with normal operation of the college computing system including, but not limited to, unsolicited e-mail.

(19) Violation of other published college policies, rules or regulations.

(20) Violation of federal, state or local law on college premises or at college-sponsored or supervised activities.

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-070 Disciplinary proceedings.** (1) **Complaints.** Any member of the college community may file a complaint against any student for misconduct. Complaints shall be submitted within ninety days after the incident. Complaints shall be prepared in writing and directed to the office of the ~~((judicial advisor))~~ student conduct administrator.

(2) **Notice to accused student.** When a complaint is filed against a student, the ~~((judicial advisor))~~ student conduct administrator will, within five school days, serve written

notice on the accused student, including a copy of the code of student conduct advising the student of the charges against him or her.

(3) **Informal process.** The ~~((judicial advisor))~~ student conduct administrator may, but is not required to, conduct an investigation to determine the merit of the complaint and if it can be disposed of informally by mutual consent of the parties involved. For adverse parties who agree to settle the complaint informally, the ~~((judicial advisor))~~ student conduct administrator will facilitate communication between the complainant(s) and the student(s) accused (respondent(s)). The ~~((judicial advisor))~~ student conduct administrator will determine the best means of conducting the informal process, the purpose of which is to reach an agreement that is mutually satisfactory to the parties, if possible. Interim sanctions may be imposed at any time during the informal process with good reason (see WAC 132D-120-090 Interim sanctions ~~((section))~~). If it is determined that the matter cannot be resolved by mutual consent, a summary disciplinary conference will be initiated by the ~~((judicial advisor))~~ student conduct administrator.

(4) **Summary proceedings.**

(a) **Disposition.** After considering the evidence in the case and interviewing the respondent in a summary hearing (if the respondent has appeared at the scheduled conference), the ~~((judicial advisor))~~ student conduct administrator may:

(i) Terminate the proceeding exonerating the student(s);

(ii) Dismiss the case after whatever counseling and advice the ~~((judicial advisor))~~ student conduct administrator deems appropriate; or

(iii) Impose any of the sanctions listed in this code.

The decision shall be in writing and shall be served on both the respondent and the complainant.

(b) **Request for formal hearing.** After the ~~((judicial advisor's))~~ student conduct administrator's decision, the respondent and/or the complainant may request a formal hearing to challenge a decision reached, or a sanction imposed, by the ~~((judicial advisor))~~ student conduct administrator pursuant to the informal disciplinary hearing. Such requests shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator within five school days of the ~~((judicial advisor's))~~ student conduct administrator's decision. A time shall be set for a formal hearing not less than five, nor more than fifteen, calendar days after the request for a formal hearing. If there is good reason and the complainant(s) and the respondent(s) agree, time limits for scheduling a hearing may be extended at the discretion of the ~~((judicial advisor))~~ student conduct administrator.

(5) **Formal hearings.** Formal hearings shall be convened by the ~~((judicial advisor))~~ student conduct administrator and conducted by a judicial body according to the following guidelines:

(a) Hearings shall be conducted in private. Hearings will be chaired by the ~~((judicial advisor))~~ student conduct administrator or his/her designee.

(b) The complainant(s) and the respondent(s) shall be expected to attend the formal hearing. Admission of any person to the hearing shall be at the discretion of the ~~((judicial advisor))~~ student conduct administrator.



(c) In hearings involving more than one accused student, the ~~((judicial advisor))~~ student conduct administrator, at his or her discretion, may permit separate hearings for each respondent.

(d) The complainant and the respondent have the right to be assisted by any advisor they choose, at their own expense. The advisor may be an attorney, but advisors are not permitted to speak or participate directly in any hearing before a ~~((judicial body))~~ student conduct board, except as permitted by the ~~((judicial advisor))~~ student conduct administrator. If the student chooses to be advised by a licensed attorney in the state of Washington, he/she must notify the ~~((judicial advisor))~~ student conduct administrator at least five working days prior to the hearing.

(e) The complainant, the respondent and the ~~((judicial body))~~ student conduct administrator shall have the right of presenting witnesses and evidence, subject to the right of questioning by the ~~((judicial body))~~ student conduct board, the complainant or the respondent. The ~~((judicial advisor))~~ student conduct administrator may limit the scope and number of questions to witnesses.

(f) Pertinent records, exhibits and written statements may be accepted for consideration as evidence prior to, or during, a hearing by a ~~((judicial body))~~ student conduct board at the discretion of the ~~((judicial advisor))~~ student conduct administrator.

(g) All procedural questions are subject to the final decision of the ~~((judicial advisor))~~ student conduct administrator.

(h) After the hearing, the judicial body shall determine whether the student has violated the code of conduct as charged.

(i) The ~~((judicial body's))~~ student conduct board's determination shall be made on the basis of whether it is more likely than not that the respondent violated the code of conduct.

(j) If the ~~((judicial body))~~ student conduct board determines that a student has violated the code of conduct, the body will determine whether the sanction(s) imposed pursuant to the informal disciplinary conference were appropriate for the violation of the code of conduct which the student was found to have committed.

(k) A ~~((judicial body))~~ student conduct board may reduce or increase the sanctions imposed by the ~~((judicial advisor))~~ student conduct administrator pursuant to the informal disciplinary conference or remand the case to a ~~((judicial advisor))~~ student conduct administrator.

(6) There shall be a single verbatim record, such as a tape recording, of all hearings before a judicial body. The record shall be the property of the college and shall be preserved until the decision is final after the time for appeals has passed.

**AMENDATORY SECTION** (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-080 Sanctions.** (1) The following sanctions may be imposed by the ~~((judicial advisor))~~ student conduct administrator upon any student, group or organization found to have violated the code of conduct:

(a) Warning—A notice in writing to the student that the student has violated this code and that further violation may result in additional disciplinary proceedings and sanctions.

(b) Probation—A written reprimand placing conditions upon the student's continued attendance. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating the code during the probationary period. Notice will be made in writing and shall specify the period of probation and the conditions, such as limiting the student's participation in extracurricular activities.

(c) Loss of privileges—Denial of specified privileges for a designated period of time.

(d) Fines—Fines may be imposed.

(e) Restitution—Compensation for loss, damage or injury. This may take the form of appropriate service and/or monetary or material replacement.

(f) Discretionary sanctions—Work assignments, service to the college or other related discretionary assignments.

(g) Deactivation—(Applies to student groups or organizations). Loss of all privileges, including college recognition, for a specified period of time.

(h) College suspension—Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(i) College expulsion—Permanent separation of the student from the college. There shall be no refund of fees for the quarter in which the action is taken but fees paid in advance for a subsequent quarter will be refunded.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3) Disciplinary sanctions shall not be made part of the student's permanent academic record, but shall become part of the student's confidential record. Upon graduation and application to the ~~((judicial advisor))~~ student conduct administrator, the student's confidential record may be expunged of disciplinary actions other than college suspension or expulsion consistent with the college's schedule of record disposition.

(4) In each case in which a judicial body determines that a student has violated the code of conduct, the sanction(s) shall be determined by the ~~((judicial advisor))~~ student conduct administrator. In cases in which persons other than, or in addition to, the ~~((judicial advisor))~~ student conduct administrator have been authorized to serve as the ~~((judicial body))~~ student conduct administrator, the recommendation of all members of the ~~((judicial body))~~ student conduct board shall be considered by the ~~((judicial advisor))~~ student conduct administrator in determining and imposing sanctions. The ~~((judicial advisor))~~ student conduct administrator is not limited to sanctions recommended by members of the ~~((judicial body))~~ student conduct board. Following the hearing, the ~~((judicial body))~~ student conduct board and the ~~((judicial advisor))~~ student conduct administrator shall advise the respondent in writing of its determination and any sanction(s) imposed.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-090 Interim sanctions.** In certain circumstances, the ~~((director of)) student ((activities and auxiliary services, or designated judicial advisor,))~~ conduct administrator may impose any of the above sanctions pending a hearing before, or decision by, a ~~((judicial body))~~ student conduct board.

(1) Interim sanctions may be imposed only:

(a) To ensure the safety and well-being of members of the college community or the preservation of college property;

(b) To ensure the student's own physical or emotional safety and well-being; or

(c) If the student poses a threat of disruption to, or interference with, the educational process or other normal operations of the college.

(2) Notice of interim sanctions will be made in writing and will state:

(a) The charges against the student, including reference to the provisions of this code that were allegedly violated; and

(b) That the student charged has the right to an informal hearing before the ~~((judicial advisor))~~ student conduct administrator to challenge the interim sanctions.

(3) If such a hearing is requested, it shall be held as soon as practicable after the interim sanctions have been imposed. The ~~((judicial advisor))~~ student conduct administrator will decide whether there is probable cause to believe that continuation of the sanctions is necessary, and/or whether some other disciplinary action is appropriate.

(4) The ~~((judicial advisor))~~ student conduct administrator may continue to enforce the interim sanctions if, following the informal hearing, he or she finds that there is probable cause to believe that interim sanctioning of that student is necessary for the safety of the student, other students, or persons on college facilities, the educational process of the institution, or to restore order to the campus. The result of the informal hearing will be given to the student in writing.

(5) If sanctions are continued, the written notice shall stipulate the duration of the sanctions and conditions under which they may be terminated.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-100 Appeals.** (1) Following a formal hearing, a decision reached by a ~~((judicial body))~~ student conduct board, or a sanction imposed by the ~~((judicial advisor))~~ student conduct administrator, may be appealed by the respondent or complainant to the executive vice-president of instruction and student services ((and student success)) within ten school days of the date of the written decision. Such appeals shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator. The notice of appeal is deemed delivered on the date it is postmarked or the date it is hand-delivered to the office of the ~~((director))~~ dean.

(2) Appeals shall be limited to review of the record of the formal hearing (see disciplinary proceedings section) and

supporting documents, except as required to explain the basis of new evidence, for any of the following:

(a) To determine whether the formal hearing was conducted fairly in light of the charges and evidence presented and in conformity with the prescribed procedures, giving the complaining party a reasonable opportunity to prepare and present evidence that the student code of conduct was violated, and giving the respondent a reasonable opportunity to prepare and to present a rebuttal of those allegations.

(b) To determine whether the decision reached regarding the respondent was based on substantial evidence; that is, whether the facts in the case were sufficient to establish the fact that a violation of the student code of conduct had occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation committed.

(d) To consider new evidence, sufficient to alter a decision or other relevant facts not brought out in the formal hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing.

(3) The executive vice-president of instruction and student services ((and student success)) may, upon review of the case, reduce or increase the sanctions imposed by the ~~((judicial advisor))~~ student conduct administrator or remand the case to the ~~((judicial body))~~ student conduct board and ~~((judicial advisor))~~ student conduct administrator.

(4) **Final appeal.** Following an appeal to the executive vice-president of instruction and student services ((and student success)), a decision reached by the vice-president may be appealed by the respondent or complainant to the college president within ten school days of the date of the written decision. Such appeals shall be in writing and shall be delivered to the ~~((director))~~ dean of students ~~((life))~~ or designated ~~((judicial advisor))~~ student conduct administrator. Appeals to the college president will be conducted in the same manner as those made to the executive vice-president of instruction and student services ((and student success)). The notice of appeal is deemed delivered on the date it is postmarked or the date it is hand-delivered to the office of the ~~((director))~~ dean.

(5) The college president's decision shall be final.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-110 Student rights.** The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom:

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible

for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process:

(a) The rights of students to be secure in their persons, quarters, papers and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student rights and responsibilities is entitled, upon request, to procedural due process as set forth in this chapter.

(3) Distribution and posting: Students may distribute or post printed or published material subject to official procedures printed and available in the office of student ~~((programs and activities))~~ life.

(4) Off-campus speakers: Recognized student organizations shall have the right to invite outside speakers to speak on campus subject to the availability of campus facilities, funding, and compliance with the college procedures available in the office of student life.

AMENDATORY SECTION (Amending WSR 02-24-062, filed 12/3/02, effective 1/3/03)

**WAC 132D-120-120 Interpretation and revision.** (1) **Code interpretation.** Any question of interpretation regarding the code of conduct shall be referred to the ~~((director))~~ dean of students ~~((life))~~ or designee for final interpretation.

(2) **Code revision.** The code of conduct shall be reviewed at least every five years under the direction of the ~~((director))~~ dean of students ~~((life))~~.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-230 Student ~~((grievances))~~ complaints.** The purpose of this section is to protect each student's freedom of expression in the classroom; to protect each student against improper disclosure of the students' views, beliefs and political associations; to protect each student from improper, arbitrary or capricious academic evaluation as evidenced by the student's course grade; and to afford each student reasonable protection against arbitrary or capricious actions taken outside the classroom by other members of the college community.

Skagit Valley College is committed to protecting the rights and dignity of each individual in the campus community. Therefore, the college will not tolerate discrimination of any kind, at any level.

Students may follow the college policy on sexual harassment and/or may file complaints with outside agencies, as referenced in WAC ~~((132D-300-040(9)))~~ 132D-305-005(10). Students should determine the time deadlines that apply to the filing of complaints with such outside agencies, as the college's internal processing of student complaints may not recognize such time periods.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-240 ~~((Grievances))~~ Complaints excluded from this section.** (1) A student may not use the provisions of this section as the basis for filing a ~~((grievance))~~ complaint based on the outcome of ~~((summary or other))~~ disciplinary proceedings described in sections of the code of student conduct.

(2) Federal and state laws, rules and regulations, in addition to policies, regulations and procedures adopted by the state board for community and technical colleges or the board of trustees of Community College District No. 4 shall not be grievable matters. College personnel actions are considered confidential. Results may not be made available for review.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-250 ~~((Grievance))~~ Initial complaint.** If a student believes he or she has been unfairly treated by an officer of the college, faculty member or a member of the college staff, the student may follow the ~~((grievance))~~ complaint procedures in the order outlined below. The student must initiate proceedings with the college within thirty working days of the occurrence that gave rise to the ~~((grievance))~~ complaint. The college may choose to take appropriate corrective action at any time based on a student report whether or not the student chooses to pursue the ~~((grievance))~~ complaint process.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-260 ~~((Grievance))~~ Complaint procedure.** (1) The ~~((grievance))~~ complaint procedures set forth in this section concern only those ~~((grievances))~~ complaints that do not involve violation of Title IX of the Education Amendments of 1972 (sex discrimination) or section 504 of the Rehabilitation Act of 1973 (disability discrimination).

(2) A student wishing to pursue a resolution to his or her concern may contact the office where counseling services are provided. That office will serve as a source of information and direction for ~~((grievants))~~ complainants.

(3) A student shall contact the faculty or staff member with whom he or she has a concern and attempt to resolve the matter through direct discussion. A student may ask a support person to accompany him or her in this discussion.

(4) If direct discussion does not resolve the concern to the student's satisfaction, the student shall take the matter to the faculty/staff member's immediate supervisor. The supervisor shall attempt to resolve the matter promptly and fairly.

(5) If the issue is not resolved, the supervisor shall forward the complaint to the appropriate administrator who shall meet with the student and, within three working days, write a letter to the student involved, copied to the faculty or staff member involved that details the resolution proposed. In appropriate cases, the student shall also be informed of his or her right to file a petition to have the complaint heard before the grievance review committee.

(6) The procedure outlined in steps one through four shall be completed in twenty working days unless all parties agree to more time.

(7) ~~((The student shall be notified of this decision and shall also be informed of his or her right to file a petition to have the grievance heard before the grievance review committee.))~~ In order to have his/her complaint heard by the grievance review committee:

(a) The student must submit this request to the office of the registrar within five days of his/her receipt of the administrator's letter ~~((Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual harassment may avail himself or herself of the college's sexual harassment policy))~~;

(b) The student's complaint must fall into one of the following categories:

(i) Alleged deviation from course grading policies as specified in the syllabus;

(ii) Alleged errors in applying grading procedures;

(iii) Alleged lowering of grades for nonacademic reasons, including discrimination;

(iv) Alleged sex and/or disability discrimination in accordance with procedures described in WAC 132D-120-270.

Other complaints about college employees will be considered and acted upon at the discretion of the appropriate administrator and will not be heard by the grievance review committee.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-270 Grievance procedure—Sex and disability discrimination.** (1) Any student alleging a violation of Title IX of the Education Amendments of 1972 (sex discrimination) or section 504 of the Rehabilitation Act of 1973 (disability discrimination) shall, as a first step in the grievance procedure, contact the Title IX officer or disabled student services coordinator. The student may contact the office where counseling services are provided for the name and location of the Title IX officer or disabled student services coordinator. Any student alleging a violation of Title IX of the 1972 Education Amendments concerning sexual harassment by a college faculty or staff member may avail himself or herself of the college's sexual harassment complaint procedures.

(2) The Title IX officer or disabled student services coordinator shall:

(a) Provide information about informal and formal options within and outside the college.

(b) Intervene, if requested by either party, in order to resolve the problem to the satisfaction of all.

(3) If the Title IX officer or disabled student services coordinator is unable to resolve the ~~((grievance))~~ complaint, the student may request a hearing before the grievance review committee and is entitled to all appeals beyond that committee.

(4) Consultations with the Title IX officer and the disabled student services coordinator shall be strictly confidential.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-280 Grievance review committee procedures.** (1) Any ~~((grievance))~~ complaint meeting the criteria listed in WAC 132D-120-260 not resolved by an administrator or the Title IX officer or disabled student services coordinator may be appealed to the grievance review committee for a hearing. The ~~((grievant))~~ complainant or respondent shall petition the committee by obtaining an official ~~((grievance))~~ complaint form from the office where counseling services are provided. That petition shall be made within five working days of the notice of decision in the previous proceedings.

(2) When a petition for review is filed, the student shall either:

(a) Be assigned a process advisor by the college or choose an advisor of his/her own; or

(b) Waive his or her right to an advisor; or

(c) Notify the college of his or her retention of an attorney at least one week prior to a scheduled grievance hearing. Where the student is accompanied by an attorney, the college may be represented by an assistant attorney general.

(3) The student's completed official ~~((grievance))~~ complaint form shall be distributed to all members of the grievance review committee.

(4) The registrar shall chair the grievance review committee and its members shall be chosen as follows:

(a) Two faculty members appointed by the vice-president of ~~((educational))~~ instruction and student services; and

(b) Two students appointed by the president of the associated students of Skagit Valley College; and

(c) Two classified staff members appointed by the classified staff designated leadership.

(5) The grievance review committee may call any witnesses and hear any testimony needed to reach a prompt, fair resolution of the ~~((grievance))~~ complaint. The proceedings before the committee shall not be considered a formal trial-type hearing.

(6) Within three working days of the conclusion of the hearing, the committee shall issue a written ~~((recommendation. All parties shall receive a copy of this recommendation.))~~ decision to all involved in the case.

(7) If a student feels that his/her case was not handled according to the procedures set forth in this section, he/she may request that it be reviewed by the appropriate vice-president. The vice-president's review will be limited to the process used in decision making. In the case of instructional grievances, the ~~((committee's recommendations))~~ request for review shall be sent to the executive vice-president of ~~((educational))~~ instruction and student services. In all other cases, the ~~((committee's recommendations))~~ request shall be forwarded to the vice-president responsible for the area in which the faculty or staff member is employed. The appropriate vice-president shall, within five working days, ~~((accept, modify, or reject the recommendations of))~~ review the process used by administrators and the grievance review committee and notify all parties if the process is to be corrected in any way.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-290 Final decision regarding ~~(the appeal procedure)~~ process review—Extra-institutional appeals.** (1) Where the student is not satisfied by the vice-president's decision, he or she may appeal that decision to the president of the college provided that such appeal is made within five working days of the student's receipt of notice of the decision.

(2) The president will review the ~~((record of the case prepared by the))~~ process carried out by administrators and the grievance review committee together with any appeal statement and will deliver a written acceptance of the vice-president's decision or directions as to what other course of action shall be taken, within ten instructional days after receiving the appeal.

(3) This decision shall constitute final agency action by the college.

(4) A student who feels aggrieved by the institution's final decision, may petition for judicial review of that decision according to the provisions of RCW 28B.19.150.

(5) For further review in sexual or disability discrimination cases, the grievant may send appeals or inquiries to:

(a) U.S. Department of Education  
Office for Civil Rights Region X  
915 Second Avenue, Room 3310  
Seattle, WA 98174  
206-220-7900

(b) Washington State Human Rights Commission  
Third Avenue  
Seattle, Washington 98101  
206-464-6500

(c) Department of Justice Civil Rights Division  
1424 New York Avenue, Room 5041  
Washington, D.C. 20005  
202-307-0818 (TTD), or 800-514-0383 (voice)

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

**WAC 132D-120-300 Nature of grievance proceedings.** All hearings growing out of a student-initiated ~~((grievance))~~ complaint, including appeals to the office of the president, shall remain closed unless all parties to the grievance agree on an open hearing.

AMENDATORY SECTION (Amending Order 88-01, filed 12/1/88, effective 1/1/89)

**WAC 132D-120-310 Withdrawal of grievance.** (1) At any time during the complaint or grievance procedure, the ~~((grievant))~~ complainant may officially withdraw the grievance in writing.

(2) In the event the ~~((grievant))~~ complainant or appellant fails to appear for any scheduled hearing without prior notification or evidence of extenuating circumstances, this shall be considered to constitute withdrawal of the grievance or appeal.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-320 Administrative, faculty and staff grievances.** Any administrator, faculty member or staff member who is the subject of a student's ~~((grievance))~~ complaint and who is dissatisfied with the results of any level of the student ~~((grievance))~~ complaint proceedings may file a grievance under the appropriate grievance procedure established by Skagit Valley College.

AMENDATORY SECTION (Amending WSR 05-24-059, filed 12/2/05, effective 1/2/06)

**WAC 132D-120-350 Effective date of the rules of conduct.** The rules contained within this chapter shall become effective July 1, ~~((2005))~~ 2009.

## WSR 09-16-129

### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2008-12—Filed August 5, 2009, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-09-135.

Title of Rule and Other Identifying Information: Unfair practices with respect to cancellations of policies by insureds.

Hearing Location(s): OIC Tumwater Office, Training Room 120, 5000 Capitol Boulevard, Tumwater, WA, <http://www.insurance.wa.gov/about/directions.shtml>, on September 8, 2009, at 9:30 a.m.

Date of Intended Adoption: October 6, 2009.

Submit Written Comments to: Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, e-mail [kacys@oic.wa.gov](mailto:kacys@oic.wa.gov), fax (360) 586-3109, by September 8, 2009.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 4, 2009, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes to clarify the methods by which insureds may cancel property and casualty insurance policies. This proposed rule will adopt the current Technical Assistance Advisory #98-5 as an administrative regulation; amending WAC 284-30-590. The proposal clarifies the permitted methods for acceptable methods of handling cancellation requests.

Reasons Supporting Proposal: RCW 48.18.300 allows insureds to cancel property and casualty insurance policies by providing written notice to the insurance company. To address some confusion, the proposed rule clarifies the permitted methods of cancelling property and casualty insurance policies. The proposed rule does not affect life, disability or managed care contracts.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: RCW 48.18.300.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Kacy Scott, 302 Sid Snyder Avenue, Olympia, WA 98504-0258, (360) 725-7041; Implementation and Enforcement: Jim Odiorne, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7214.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no affected domestic insurers that meet the definition of "small business" under chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chris Carlson, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 360-725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

August 5, 2009

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

**WAC 284-30-590 Unfair practices with respect to policy cancellations, renewals, and changes.** (1) It is unfair practice to utilize a twenty-day notice to increase premiums by a change of rates or to change the terms of a policy to the adverse interest of the insured thereunder, except on a one time basis in connection with the renewal of a policy as permitted by RCW 48.18.2901(2), or to utilize such notice if it is not, by its contents, made clearly and specifically applicable to the particular policy and to the insured thereunder or does not provide sufficient information to enable the insured to understand the basic nature of any change in terms or to calculate any premium resulting from a change of rates.

(2) In the unusual situation where a contract permits a midterm change of rates or terms, other than in connection with a renewal, it is an unfair practice to effectuate such change with less than forty-five days advance written notice to the named insured, or to utilize a contract provision which is not set forth conspicuously in the contract under an appropriate caption of sufficient prominence that it will not be minimized or rendered obscure.

(3) It is an unfair practice to effectuate a change of rates or terms other than prospectively. Such changes may be effective no sooner than the first day following the expiration of the required notice.

(4) If an insured elects to not continue coverage beyond the effective date of any change of rates or terms, it is an unfair practice to refund any premium on less than a pro rata basis.

(5) The cancellation and renewal provisions set forth in chapter 48.18 RCW do not apply to surplus line policies. To avoid unfair competition and to prevent unfair practices with respect to consumers, it is an unfair practice for any surplus line broker to procure any policy of insurance pursuant to chapter 48.15 RCW that is cancelable by less than ten days advance notice for nonpayment of premium and twenty days

for any other reason, except as to a policy of insurance of a kind exempted by RCW 48.15.160. This rule shall not prevent the cancellation of a fire insurance policy on shorter notice in accord with chapter 48.53 RCW.

(6) Except where the insurance policy is providing excess liability or excess property insurance including so-called umbrella coverage, it is an unfair practice for an insurer to make a common practice of giving a notice of non-renewal of an insurance policy followed by its offer to rewrite the insurance, unless the proposed renewal insurance is substantially different from that under the expiring policy.

(7) Where the rate has not changed but an incorrect premium has been charged, if the insurer elects to make a mid-term premium revision, it is an unfair practice to treat the insured less favorably than as follows:

(a) If the premium revision is necessary because of an error made by the insurer or its agent, the insurer shall:

(i) Notify the applicant or insured of the nature of the error and the amount of additional premium required; and

(ii) Offer to cancel the policy or binder pro rata based on the original (incorrect) premium for the period for which coverage was provided; or

(iii) Offer to continue the policy for its full term with the correct premium applying no earlier than twenty days after the notice of additional premium is mailed to the insured.

(b) If the premium revision results from erroneous or incomplete information supplied by the applicant or insured, the insurer shall:

(i) Correct the premium or rate retroactive to the effective date of the policy; and

(ii) Notify the applicant or insured of the reason for the amount of the change. If the insured is not willing to pay the additional premium billed, the insurer shall cancel the policy, with appropriate statutory notice for nonpayment of premium, and compute any return premium based on the correct premium.

(c) This subsection recognizes that an insurer may elect to allow an incorrect premium to remain in effect to the end of the policy term because the insured is legally or equitably entitled to the benefit of a bargain made.

(8) If a policy includes conditions allowing the insured to cancel the policy, the insured may cancel the policy or binder issued as evidence of coverage.

(a) The insured may provide notice before the effective date of cancellation using one of these methods:

(i) Written notice of cancellation to the insurer or producer by mail, fax or e-mail;

(ii) Surrender of the policy or binder to the insurer or producer; or

(iii) Verbal notice to the insurer or producer.

(b) If the insurer receives notice of cancellation from the insured, it must accept and promptly cancel the policy or any binder issued as evidence of coverage effective the later of:

(i) The date notice is received; or

(ii) The date the insured requests cancellation.

(c) If an insured provides verbal notice of cancellation to the insurer, the insurer may require the insured to provide written confirmation of cancellation, but may not impose a waiting period for cancellation by requiring written confirmation from the insured.

(d) Insurers may retroactively cancel a policy to accommodate the insured.

(e) Insurers must establish safeguards to ensure the person requesting cancellation:

(i) Is authorized to do so; and

(ii) Understands that the request to cancel the policy is binding on both parties.

**WSR 09-16-137**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 5, 2009, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-11-081.

Title of Rule and Other Identifying Information: ESHB 2261 states that after January 1, 2010, the professional educator standards board (PESB) may no longer require a college preparation program completion for teachers seeking professional certification. WAC 181-78A-010, 181-78A-500, 181-78A-505, 181-78A-515, 181-78A-520, 181-78A-530, 181-78A-535 and 181-78A-540, are each amended to remove requirements for attending and completing a college preparation program for professional certification. Requirements for teachers to achieve professional certification will be added to those candidate equipments [requirements] articulated in chapter 181-79A WAC.

Hearing Location(s): Red Lion at the Park, 201 West North River Drive, Spokane, WA 99201, on September 23, 2009, at 8:30 a.m.

Date of Intended Adoption: September 23, 2009.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 16, 2009.

Assistance for Persons with Disabilities: Contact David Brenna, by September 16, 2009, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Legislative requirement to remove preparation program completion for professional certification. Rule will amend those sections of chapter 181-78A WAC pertaining to professional certification. New rules will be proposed to amend chapter 181-79A WAC that defines and regulates teacher requirements without college requirements.

Reasons Supporting Proposal: Legislature is reducing the expectations for teachers to attend higher education institutions in order to advance in their career.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

August 5, 2009

David Brenna

Legislative and

Policy Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 09-17 issue of the Register.

**WSR 09-16-138**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed August 5, 2009, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-02-078.

Title of Rule and Other Identifying Information: Chapter 139-37 WAC, Certified firearms instructors—Private security, private investigators, and bail bond recovery agents.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room E-154, Burien, WA 98148, on Wednesday, September 9, 2009, at 10 a.m.

Date of Intended Adoption: September 9, 2009.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7298, by September 2, 2009.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by September 7, 2009, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to chapter 139-37 WAC are being proposed to include bail bond recovery agents and simple language updates.

In addition, the title of chapter 139-37 WAC has been changed from "Firearms certification—Instructors—Records" to "Certified firearms instructors—Private security, private investigators, and bail bond recovery agents."

Reasons Supporting Proposal: Name is updated to be consistent with other WACs.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Rachelle Parslow, Burien, Washington, (206) 835-7346; Implementation and Enforcement: Michael D. Parsons, Burien, Washington, (206) 835-7347.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328.

August 5, 2009  
Sonja Hirsch  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-02-042, filed 12/24/91, effective 1/24/92)

**WAC 139-37-005 Certified firearms ((certification)) instructors—((Certified instructors)) Requirements.** (1) For the purposes of chapters 139-30 and 139-35 WAC, "certified firearms instructor" means any individual who:

(a) Applies for certified firearms instructor certification to the commission on a form prescribed by the commission for such purpose; and

(b) Pays an administrative fee of twenty-five dollars; and

(c) Satisfactorily completes an instructor orientation course regarding the requirements of instruction and testing for firearms certification of private security guards ~~((and))~~, private ~~((detectives))~~ investigators, and bail bond recovery agents; and

~~((i)) Documents satisfactory completion of a firearms instructor course approved by the commission; or~~

~~((ii)) Satisfactorily completes a firearms instructor course conducted by the commission; and~~

~~((d)) Meets one of the following:~~

~~((i)) Is currently employed as a full-time commissioned law enforcement officer; or~~

~~((ii)) Is currently licensed as a private security guard or private detective; or~~

~~((iii)) Submits a set of fingerprints to the commission for the purposes of background investigation; and~~

~~((e))~~ (d) Has not been convicted of a gross misdemeanor or felony; and has not been convicted of a misdemeanor involving the use or threatened use of a firearm; and has not committed any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not.

(2) A certified firearms instructor is authorized to conduct an approved program of instruction and testing for firearms certification of private security guards ~~((and))~~, private ~~((detectives))~~ investigators, and bail bond recovery agents. The certified firearms instructor shall not be considered an employee, agent, contractor, or representative of the commission.

(3) The commission may monitor and review the program of instruction and testing conducted by a certified firearms instructor for the purpose of determining compliance with the commission's program materials and standards.

(4) Certified firearms instructor status may be revoked by the commission for cause, including, but not limited to:

(a) Misrepresentation of facts on the initial application for certified firearms instructor certification; or

(b) Conviction of a gross misdemeanor or felony; or conviction of a misdemeanor involving the use or threatened use of a firearm; or the commission of any act involving moral turpitude, dishonesty, or corruption, whether the act constitutes a crime or not; or

(c) Failure to conduct the armed private guard ~~((or))~~, armed private ~~((detective))~~ investigator, or bail bond recovery agent firearms certification/recertification program as prescribed by the commission; or

(d) Falsification of any documentation or score relating to the firearms certification/recertification program; or

(e) Unsafe firearms handling during the firearms certification/recertification process.

(5) The commission may require periodic instructor update training at its discretion, but no more frequently than once a year.

AMENDATORY SECTION (Amending WSR 92-02-042, filed 12/24/91, effective 1/24/92)

**WAC 139-37-010 Certified firearms ((certification)) instructors—Records.** (1) A master record of firearms certificate issuances by the commission to private security guards ~~((and))~~, private ~~((detectives))~~ investigators, and bail bond recovery agents shall be maintained by the commission.

(2) A master record of certified firearms instructors for purposes of chapters 139-30 and 139-35 WAC shall be maintained by the commission.

(3) The aforementioned records shall be accessible by any individual, organization, private security company, ~~((or))~~ private ~~((detective))~~ investigation agency, or bail bond recovery/bail bond agency making written inquiry to the commission ~~((at its administrative offices, P.O. Box 0905, Olympia WA 98504-0905))~~ to WSCJTC, Public Records Officer, 19010 1st Ave. S., Burien, WA 98148.

**WSR 09-16-140  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed August 5, 2009, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-02-086.

Title of Rule and Other Identifying Information: WAC 246-976-420 Trauma registry—Department responsibilities and 246-976-430 Trauma registry—Provider responsibilities. These sections establish the statewide trauma data registry in order for the department to collect and analyze data on the incidence, severity and causes of trauma. The sections establish the department's and providers' responsibilities as it relates to the trauma registry.

Hearing Location(s): Department of Health, Point Plaza East, 1st Floor, Conference Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on September 14, 2009, at 10:00 a.m.

Date of Intended Adoption: September 28, 2009.



Submit Written Comments to: Susan Reynolds, Department of Health, P.O. Box 47853, Olympia, WA 98504-7853, e-mail [susan.reynolds@doh.wa.gov](mailto:susan.reynolds@doh.wa.gov), web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by September 14, 2009.

Assistance for Persons with Disabilities: Contact Susan Reynolds by September 7, 2009, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule revisions is to update the trauma registry requirements in order for the department to collect the most critical and relevant data on trauma injuries. The anticipated effects of the proposal include: (1) Better quality and quantity trauma data submitted to the department; (2) the department's enhanced ability to do quality assurance of the state's trauma system; (3) assess, identify, and report preventable trauma incidents; and (4) provide trauma review teams with critical analysis of each trauma designated site.

Reasons Supporting Proposal: The statewide trauma data registry was established to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The data elements submitted to the department are analyzed to improve the availability and delivery of prehospital and hospital trauma care services. The current registry rules were last revised in 2002. More relevant data is needed to assess the current trauma delivery system and thereby improve the quality, effectiveness, efficiency, and accessibility of the state's trauma system.

Statutory Authority for Adoption: RCW 70.168.060 and 70.168.090.

Statute Being Implemented: RCW 70.168.090 and 70.168.060.

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

Name of Proponent: Department of health, office of community health systems, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Susan Reynolds, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2872; and Enforcement: Kathy Schmitt, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-2869.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Susan Reynolds, Trauma Registry Administrator, 243 Israel Road S.E., P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2872, fax (360) 236-2830, e-mail [susan.reynolds@doh.wa.gov](mailto:susan.reynolds@doh.wa.gov).

August 5, 2009  
Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

**WAC 246-976-420 Trauma registry—Department responsibilities.** (1) **Purpose:** The department maintains a trauma registry, as required by RCW 70.168.060 and 70.168.090. The purpose of this registry is to:

- (a) Provide data for injury surveillance, analysis, and prevention programs;
- (b) Monitor and evaluate the outcome of care of major trauma patients, in support of statewide and regional quality assurance and system evaluation activities;
- (c) Assess compliance with state standards for trauma care;
- (d) Provide information for resource planning, system design and management;
- (e) Provide a resource for research and education.

(2) **Confidentiality:** It is essential for the department to protect information regarding specific patients and providers. Data elements related to the identification of individual patient's, provider's, and facility's care outcomes shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(a) The department may release confidential information from the trauma registry in compliance with applicable laws and regulations. No other person may release confidential information from the trauma registry without express written permission from the department.

(b) The department may approve requests for trauma registry data from qualified agencies or individuals, consistent with applicable statutes and rules. The department may charge reasonable costs associated with such requests.

(c) The data elements indicated (~~as confidential~~) in Tables E, F and G below are considered confidential.

(d) The department will establish criteria defining situations in which additional registry information is confidential, in order to protect confidentiality for patients, providers, and facilities.

(e) This paragraph does not limit access to confidential data by approved regional quality assurance programs established under chapter 70.168 RCW and described in WAC 246-976-910.

(3) **Inclusion criteria:**

(a) The department will establish inclusion criteria to identify those injured patients that designated trauma services must report to the trauma registry.

These criteria will include:

~~((+))~~ All patients who were discharged with ICD diagnosis codes of 800.0 - 904.99, 910 - 959.9 (injuries), 994.1 (drowning), 994.7 (asphyxiation), or 994.8 (electrocution) and:

~~((A))~~ (i) For whom the hospital trauma resuscitation team (~~full or modified~~) was activated; or

~~((B))~~ (ii) Who were dead on arrival at your facility; or

~~((C))~~ (iii) Who were dead at discharge from your facility; or

~~((D))~~ (iv) Who were transferred by ambulance into your facility from another facility; or

~~((E))~~ (v) Who were transferred by ambulance out of your facility to another acute care facility; or

~~((F))~~ (vi) Adult patients (age fifteen or greater) who were admitted as inpatients to your facility and have a length of stay greater than two days or forty-eight hours; or

~~((G))~~ (vii) Pediatric patients (ages under fifteen years) who were admitted as inpatients to your facility, regardless of length of stay; or

~~((ii) All patients who meet the requirements of the state of Washington prehospital trauma triage procedures described in WAC 246-976-930(3);)~~ (viii) All injuries flown from the scene;

(b) For all licensed rehabilitation services, these criteria will include all patients who were included in the trauma registry for acute care.

(4) **Other data:** The department and regional quality assurance programs may request data from medical examiners and coroners in support of the registry.

(5) **Data linking:** To link data from different sources, the department will establish procedures to assign a unique identifying number (~~((trauma band number))~~) to each trauma patient. All providers reporting to the trauma registry must include this trauma number.

(6) **Data submission:** The department will establish procedures and format for providers to submit data electronically. These will include a mechanism for the reporting agency to check data for validity and completeness before data is sent to the registry.

(7) **Data quality:** The department will establish mechanisms to evaluate the quality of trauma registry data. These mechanisms will include at least:

(a) Detailed protocols for quality control, consistent with the department's most current data quality guidelines.

(b) Validity studies to assess the timeliness, completeness and accuracy of case identification and data collection. ~~((The department will report quarterly on the timeliness, accuracy and completeness of data.))~~

(8) **Registry reports:**

(a) Annually, the department will report:

(i) Summary statistics and trends for demographic and related information about trauma care, for the state and for each EMS/TC region;

(ii) Outcome measures, for ~~((evaluation of clinical care and))~~ system-wide ~~((quality assurance and))~~ evaluation, and regional quality improvement programs~~((-~~

~~(b) Semiannually, the department will report:~~

~~(i))~~;

(iii) Trends, patient care outcomes, and other data, for each EMS/TC region and for the state, for the purpose of regional evaluation;

~~((ii) On all patient data entered into the trauma registry during the reporting period;~~

~~((iii))~~ (iv) Aggregate regional data to the regional EMS/TC council, excluding any confidential or identifying data.

~~((e) The department will provide:~~

~~(i) Provider specific raw data to the provider that originally submitted it;~~

~~(ii) Periodic reports on financial data;~~

~~(iii) Registry reports to all providers that have submitted data;~~

~~(iv) For the generation of quarterly reports to all providers submitting data to the registry, for the purpose of planning, management, and quality assurance.))~~ (b) The department will provide reports to facilities upon request, according to the confidentiality provisions in subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 02-02-077, filed 12/31/01, effective 1/31/02)

**WAC 246-976-430 Trauma registry—Provider responsibilities.** (1) ~~((Trauma care providers, prehospital and hospital, must place a trauma ID band on trauma patients, if not already in place from another agency.~~

~~(2))~~ All trauma care providers must protect the confidentiality of data in their possession and as it is transferred to the department.

~~((3))~~ (2) All trauma care providers must correct and resubmit records which fail the department's validity tests described in WAC 246-976-420~~((6))~~ (7). You must send corrected records to the department within three months of notification.

~~((4))~~ (3) Licensed prehospital services that transport trauma patients must:

(a) ~~((Assure personnel use the trauma ID band.))~~ Provide an initial report of patient care to the receiving facility at the time the trauma patient is delivered as described in WAC 246-976-330.

(b) ~~((Report data as shown in Table E for trauma patients defined in WAC 246-976-420. Data is to be reported to the receiving facility in an approved format within ten days.~~

~~(5))~~ Within ten days after the trauma patient is delivered, send a complete patient care report to the receiving facility to include the data shown in Table E.

(4) Designated trauma services must:

(a) ~~((Assure personnel use the trauma ID band.))~~ Have a person identified as responsible for coordination of trauma registry activities.

(b) Report data elements shown in Table F for all patients defined in WAC 246-976-420.

(c) Report patients ~~((discharged))~~ in a calendar quarter in ~~((an))~~ a department-approved format by the end of the following quarter. ~~((The department encourages more frequent data reporting.~~

~~(6))~~ (5) Designated trauma rehabilitation services must:

~~((a) Report data on all patients who were included in the trauma registry for acute care.~~

~~(b) Report either:~~

~~(i))~~ Provide data to the trauma registry upon request.

(a) Data elements shown in Table G; or

~~((ii))~~ (b) If the service submits data to the uniform data set for medical rehabilitation, provide a copy of the data to the department.

<b>TABLE E: Prehospital Data Elements for the Washington Trauma Registry</b>			
<b>Data Element</b>	<b>Type of patient</b>	<b>Pre-Hosp Transport</b>	<b>Inter-Facility</b>
((Note: <del>(C)</del> identifies elements that are confidential. See WAC 246-976-420- <del>(2)(e)</del> ))			
<b>Incident Information</b>			
<del>((Agency identification number (C)))</del> <u>Transporting EMS agency number</u>		X	X
<del>((Date of response (C <del>day only</del>)))</del> <u>Unit en route date/time</u>		X	((X))
<del>((Run sheet number (C)))</del> <u>Patient care report number</u>		X	X
First <u>EMS</u> agency on scene identification number ( <del>((C))</del> )		X	
<del>((Level of personnel))</del> <u>Crew member level</u>		X	X
Mode of transport		X	X
Incident county ( <del>((code))</del> )		X	
<u>Incident zip code</u>		X	
Incident location ( <del>((t))</del> ) <u>type(t)</u>		X	
Incident response area type		X	
<u>Mass casualty incident declared</u>			
<b>Patient Information</b>			
<del>((Patient's trauma identification band number (C)))</del>		X	X))
Name ( <del>((C))</del> )		X	X
Date of birth ( <del>((C))</del> ), or Age		X	X
Sex		X	X
<del>((Mechanism of injury))</del> <u>Cause of injury</u>		X	
<del>((Safety restraint or device used))</del> <u>Use of safety equipment (occupant)</u>		X	
<u>Extrication required</u>			
<u>Extrication &gt; 20 minutes</u>			
<b>Transportation</b>			
<u>Facility transported from (code)</u> ( <del>((C <del>if hospital ID</del>)))</del> )		((X))	X
<del>((Reason for destination decision))</del>		X	X))
<b>Times</b>			
<del>((Transporting agency dispatched))</del> <u>Unit notified by dispatch date/time</u>		X	X
<del>((Transporting agency arrived at scene))</del> <u>Unit arrived on scene date/time</u>		X	X
<del>((Transporting agency departed from scene))</del> <u>Unit left scene date/time</u>		X	X
<b>Vital Signs</b>			
<del>((Time))</del> <u>Date/time vital signs taken</u>		X	((X))
Systolic blood pressure ( <u>first</u> )		X	((X))
Respiratory rate ( <u>first</u> )		X	((X))
Pulse ( <u>first</u> )		X	((X))
<del>((Glasgow coma score (three components)))</del> <u>GCS eye, GCS verbal, GCS motor, GCS total, GCS qualifier</u>		X	((X))
<del>((Pupils))</del>		X	X
<u>Vitals from 1st agency on scene?</u>		X	

TABLE E: Prehospital Data Elements for the Washington Trauma Registry			
Data Element	Type of patient	Pre-Hosp Transport	Inter-Facility
<b>Trauma Triage Criteria</b>			
Vital signs, consciousness level		X	
Anatomy of injury		X	
Biomechanics of injury		X	
Other risk factors		X	
Gut feeling of medic		X	
Prehospital trauma system activation?		X	
<b>Other Severity Measures</b>			
Respiratory quality		X	
Consciousness		X	
Time (interval) for extrication		X))	
<b>Treatment:</b> ((EMS interventions)) Procedure performed		X	((X))
Procedure performed prior to this unit's care			

**TABLE F: Hospital Data Elements for the Washington Trauma Registry**

All licensed hospitals must submit the following data for patients identified in WAC 246-976-420(3):  
 ((Note: ~~(C)~~ identifies elements that are confidential. See WAC 246-976-420(2).))

**Record Identification**

- Identification of reporting facility (~~((C))~~);
- Date and time of arrival at reporting facility (~~((C-day only))~~);
- Unique patient identification number assigned to the patient by the reporting facility (~~((C))~~);
- ~~((Patient's trauma identification band number (C))~~);

**Patient Identification**

- Name (~~((C))~~);
- Date of birth (~~((C-day only))~~);
- Sex;
- Race;
- Ethnicity;
- Was the patient pregnant;
- Last four digits of Social Security number (~~((C))~~);
- Home zip code;

**Prehospital Incident Information**

- Date and time of incident (~~((C-day only))~~);
- ~~((Prehospital trauma system activated?))~~;
- Incident zip code;
- Mechanism/type of injury;
- First EMS agency on-scene ID number;
- ~~((Arrival via EMS system?))~~;
- Transporting ~~((reporting))~~ agency ID and unit number;
- Transporting agency ~~((unit))~~ patient care report number (~~((C))~~);
- ~~((Mechanism of injury~~;
- ~~Respiratory quality~~;
- ~~Consciousness~~);) Cause of injury;
- Incident county code;

- Incident location type;
- Incident response area type;
- ~~((Occupational injury?;~~
- Safety restraint/device used);) Work related?;
- Use of safety equipment (occupant);

**Earliest Available Prehospital Vital Signs**

- Time;
- Systolic blood pressure (first);
- Respiratory rate (first);
- Pulse rate (first);
- ~~((Glasgow coma score (three components)~~
- ~~Pupils~~);) GCS eye, GCS verbal, GCS motor, GCS qualifier, GCS total;
- Intubated at time of scene GCS;
- Pharmacologically paralyzed at time of scene GCS;
- Vitals from ~~((1st on-scene))~~ first EMS agency(?) on-scene;

Extrication;

- Extrication time over twenty minutes(?)
- ~~((Prehospital procedures performed~~;

**Prehospital Triage**

- ~~Vital signs/consciousness~~;
- ~~Anatomy of injury~~;
- ~~Biomechanics of injury~~;
- ~~Other risk factors~~;
- ~~Gut feeling of medic~~);)

**Transportation Information**

- Date and time ~~((transporting agency))~~ unit dispatched;
- Time ~~((transporting agency))~~ unit arrived at scene;
- Time ~~((transporting agency))~~ unit left scene;
- Transportation mode;
- ~~((Personnel))~~ Crew member level;
- Transferred in from another facility;
- Transported from (hospital patient transferred from);
- ~~((Reason for destination~~);) Who initiated the transfer?;

**ED or Admitting Information**

- Was patient intubated prior to arrival at hospital?;

Readmission:Direct admit:

Time ED physician called;  
 (~~ED physician called "code"?:~~)  
 Time ED physician available for patient care;  
 (~~Time~~) Trauma team activated;  
 Level of trauma team activation;  
Time of trauma team activation;  
 Time trauma surgeon called;  
 Time trauma surgeon available for patient care;  
 Vital Signs in ED  
 (~~Patient dead on arrival at your facility?:~~)  
 First (~~and last~~) systolic blood pressure;  
 First (~~and last~~) temperature;  
 First (~~and last~~) pulse rate;  
 First (~~and last~~) spontaneous respiration rate;  
 Lowest systolic blood pressure;  
First hematocrit level;  
Controlled rate of respiration:  
 Glasgow coma scores (eye, verbal, motor);  
Intubated at time of ED GCS:  
Pharmacologically paralyzed at time of ED GCS:  
Disaster plan implemented;  
 Injury severity scores  
 (~~Prehospital Index (PHI) score;~~)  
 Revised trauma score (RTS) on admission;  
 For pediatric patients:  
   Pediatric trauma score (PTS) on admission;  
   (~~Pediatric Risk of Mortality (PRISM) score on admission;~~  
   Pediatric Risk of Mortality—Probability of Survival (PRISM P(s));  
   Pediatric Overall Performance Category (POPC);  
   Pediatric Cerebral Performance Category (PCPC);)  
TRISS;  
 ED procedures performed;  
 ED (~~complications~~) care issues;  
Date and time of ED discharge;  
 ED discharge disposition, including  
 (~~If admitted, the admitting service;~~)  
 If transferred out, ID of receiving hospital;  
Was patient admitted to hospital?:  
If admitted, the admitting service;  
Reason for referral (receiving facility);  
Reason for transfer (sending facility);

**Diagnostic and Consultative Information**

Date and time of head CT scan;  
For patients with diagnosis of brain or facial injury:  
Was the patient diagnosed with brain or facial injury before transfer?:  
Was the diagnosis of brain or facial injury based on either physician documentation or head CT report?:  
Did the patient receive Coumadin or warfarin medication in the four days prior to injury?:  
Date/time of first international normalized ratio (INR) performed at your hospital;  
Results of first INR done at your hospital;  
Source of date and time of CT scan of head;  
Was fresh frozen plasma (FFP) or Factor VIII administered for reversal of anticoagulation?:

What medication was first used to reverse anticoagulation?:

Date and time of first dose of anticoagulation reversal medication;

Date of physical therapy consult;

Date of rehabilitation consult;

Blood alcohol content;

Toxicology screen results;

Drugs found;

Was a brief substance use intervention done?:

(~~Co-morbid~~) Comorbid factors/preexisting conditions;

**Surgical Information**

For the first operation:

Date and time patient arrived in operating room;

Date and time operation started;

OR procedure codes;

OR disposition:

For later operations:

Date and time of operation;

OR procedure codes;

OR disposition;

**Critical Care Unit Information**

Patient admitted to ICU;

Patient readmitted to ICU;

Date and time of admission for primary stay in critical care unit;

Date and time of discharge from primary stay in critical care unit;

Length of readmission stay(s) in critical care unit;

**Other in-house procedures performed (not in OR)****Discharge Status**

Date and time of facility discharge (~~(((C—day only)))~~);

Most recent ICD diagnosis codes/discharge codes, including nontrauma codes;

E-codes, primary and secondary;

Glasgow Score at discharge;

Disability at discharge (feeding/locomotion/expression);

Total ventilator days;

**Discharge disposition****Hospital discharge disposition:**

If transferred out, ID of facility patient was transferred to (~~(C)~~)

**Rehabilitation facility ID:**

If patient died in your facility

Date and time of death (~~(((C—day only)))~~);

Was an autopsy done?;

(~~Was case referred to coroner or medical examiner?~~)

~~Did coroner or medical examiner accept jurisdiction?)~~

Was patient declared brain dead prior to expiring?:

Was life support withdrawn?:

Was (~~(patient evaluated for)~~) organ donation requested?:

Organs donated?:

**Financial Information (All Confidential)**

For each patient

Total billed charges;

Payer sources (by category);

Reimbursement received (by payer category);

(~~Annually, submit ratio of costs to charges, by department.~~)

**TABLE G: Data Elements for Designated Rehabilitation Services**

Designated trauma rehabilitation services must ~~((submit))~~ provide the following data upon request by the department for patients identified in WAC 246-976-420(3).

~~((Note: ((C)) identifies elements that are confidential. WAC-246-976-420(2)))~~

**Rehabilitation services, Levels I and II**

**Patient Information**

- Facility ID ~~((C))~~
- Facility code
- Patient code
- Trauma tag/identification number ~~((C))~~
- Date of birth ~~((C-day only))~~
- Social Security number ~~((C))~~
- Patient name ~~((C))~~
- Patient sex

**Care Information**

- Date of admission ~~((C-day only))~~
- Admission class
- Date of discharge ~~((C-day only))~~
- Impairment group code
- ASIA impairment scale

**Diagnosis (ICD-9) Codes**

- Etiologic diagnosis
- Other significant diagnoses
- Complications/comorbidities
- Diagnosis for transfer or death

**Other Information**

- Date of onset
- Admit from (type of facility)
- Admit from (ID of facility)
- Acute trauma care by (ID of facility)
- Prehospital living setting
- Prehospital vocational category
- Discharge-to-living setting

**Functional Independence Measure (FIM) - One set on admission and one on discharge**

- Self care
  - Eating
  - Grooming
  - Bathing
  - Dressing - Upper
  - Dressing - Lower
  - Toileting
- Sphincter control
  - Bladder
  - Bowel
- Transfers
  - Bed/chair/wheelchair
  - Toilet
  - Tub/shower
- Locomotion
  - Walk/wheelchair
  - Stairs
- Communication
  - Comprehension
  - Expression

- Social cognition
- Social interaction
- Problem solving
- Memory

**Payment Information (all confidential)**

- Payer source - primary and secondary
- Total charges
- Remitted reimbursement by category

**Rehabilitation, Level III**

**Patient Information**

- Facility ID ~~((C))~~
- Patient number ~~((C))~~
- Trauma tag/identification number ~~((C))~~
- Social Security number ~~((C))~~
- Patient name ~~((C))~~

**Care Information**

- Date of admission ~~((C-day only))~~

**Impairment Group Code**

**Diagnosis (ICD-9) Codes**

- Etiologic diagnosis
- Other significant diagnoses
- Complications/comorbidities

**Other Information**

- Admit from (type of facility)
- Admit from (ID of facility) ~~((C))~~
- Acute trauma care given by (ID of facility) ~~((C))~~
- Inpatient trauma rehabilitation given by (ID of facility) ~~((C))~~
- Discharge-to-living setting

**Payment Information (all confidential)**

- Payer source - primary and secondary
- Total charges
- Remitted reimbursement by category

**WSR 09-16-142**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed August 5, 2009, 11:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-12-127.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and record-keeping, rates and rating system, for Washington workers' compensation insurance; retrospective rating.

This rule will describe how occupational disease claims are used in calculations for the retrospective rating program.

Hearing Location(s): Department of Labor and Industries, Tukwila Service Location, 12806 Gateway Drive, Tukwila, WA 98168, on September 8, 2009, at 9:30 a.m. - 11:00 a.m.; and at the Department of Labor and Industries, Tumwater Location, 7273 Linderson Way S.W., Tumwater, WA 98501, on September 8, 2009, at 1:30 p.m. - 3:30 p.m.

Date of Intended Adoption: September 29, 2009.

Submit Written Comments to: Diane Doherty, P.O. Box 44180, Olympia, WA 98504-4180, e-mail Dohr235@lni.wa.gov, fax (360) 902-4258, due by September 8, 2009.

Assistance for Persons with Disabilities: Contact Diane Doherty, (360) 902-4835, Dohr235@lni.wa.gov or office of information and assistance, TTY (360) 902-5797, by September 3, 2009.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** This rule making proposes to add language to WAC 296-17-90445. It adds additional information about how occupational disease claims are included in retrospective rating adjustment calculations. The proposed language will explain how chargeable claim costs are assigned to retro and nonretro employers, and that claim costs not assigned to any employer will be eliminated from the retro processes through the calculation of the performance adjustment factor.

**Reasons Supporting Proposal:** This action is necessary to maintain the integrity of the retrospective rating system and to ensure that retro and nonretro employers are both paying their fair share of costs.

**Statutory Authority for Adoption:** RCW 51.18.010(2), 51.04.020.

**Statute Being Implemented:** RCW 51.18.010, 51.04-.020.

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

**Name of Proponent:** Labor and industries, governmental.

**Name of Agency Personnel Responsible for Drafting and Implementation:** Diane Doherty, Tumwater, Washington, (360) 902-4835; and **Enforcement:** Robert Malooly, Tumwater, Washington, (360) 902-4209.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.025(3) does not apply to a rule described in RCW 34.05.310(4), and that subsection exempts rules that "set or adjust fees pursuant to legislative standards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 exempts from its requirements rules "that set or adjust fees pursuant to legislative standards." These proposed rules clarify one part of the process for calculating retrospective rating premiums.

August 4, 2009

Judy Schurke  
Director

**AMENDATORY SECTION** (Amending WSR 07-17-140, filed 8/21/07, effective 10/1/07)

**WAC 296-17-90445 Valuation of coverage period. Our responsibility:**

• Nine months after the coverage period has ended, we will do an initial valuation of the losses for each employer and group participating in retrospective rating.

**Note:** Effective with the October 1, 2000, coverage period and all subsequent coverage periods thereafter, each retrospective rating plan has three mandatory valuations and no optional valuations. The first valuation takes place roughly nine

months from the last day of the coverage period. Each subsequent valuation will occur at twelve-month intervals from the initial evaluation date.

**Example:** Assume that your coverage period began July 1, 2001, and ended June 30, 2002 (twelve calendar months). Our first valuation date would occur the end of March 2003. This is roughly nine months from the last day of the coverage period.

• On the valuation date, all claims with injury dates that fall within the coverage period are valued and the incurred losses that have been established for these claims are "captured" or "frozen."

**Note:** Our valuation is limited to the open or closed status of a claim on the evaluation date. We do not consider adjudicative decisions (i.e., claim allowance, case reserve, wage determination and dependent status) surrounding a claim in our valuation.

For occupational disease claims that arise from exposure to the disease hazard by two or more employers, the claim costs are prorated and assigned to each period of employment involving the exposure. Each employer responsible for at least ten percent of the claimant's exposure to the hazard is charged (see WAC 296-17-870(6)).

To compute the performance adjustment factors, assigned occupational disease losses are considered "retro losses" if on the date of the last injurious exposure with an employer, the employer was enrolled in retro. Occupational disease losses are considered "nonretro losses" if on the date of the last injurious exposure with an employer, the employer was insured with the state fund, but not enrolled in the retro program. Occupational disease losses that cannot be assigned as either retro or nonretro losses will not be considered in computing performance adjustment factors.

• During the adjustment process we convert the captured incurred loss of each claim into developed losses using the appropriate loss development and performance adjustment factors. Retrospective premium is then calculated using the applicable formulas and tables in the retrospective rating manual.

• Prior to the application of the performance adjustment factor, we will cap the pure developed loss value for any one claim or group of claims arising from a single accident that has collective pure developed losses in excess of five hundred thousand dollars at a maximum of five hundred thousand dollars.

• Since the standard premium used in the retro calculation is based on premiums reported but not necessarily paid, we will deduct from the standard premium calculation any unpaid member premiums.

**Note:** A sponsoring organization and L&I can enter into an agreement for an alternate debt recovery method.

• Approximately twenty days after the valuation date, if entitled, we will send you your premium refund.

**Note:** If you participate in an individual plan or retro group, we will not issue a refund check if it is less than ten dollars. If a refund is less than ten dollars, we will credit the amount to your industrial insurance account and you can deduct the amount from your next premium payment. All retro group refunds are paid directly to the sponsoring organization. It is the responsibility of the sponsoring organization to dis-

tribute any refund to the group members. L&I does not regulate how refunds are distributed to group members. Employers that participate in retro are not required to share any of their retro refund with employees nor can they charge employees in the event of an additional assessment.

- We will send you a bill if you owe us additional premium.

**Note:** If you owe additional premium, it is due thirty days after we communicate the decision to you. We will charge penalties on any additional premium not paid when it is due (RCW 51.48.210). If you (employer in an individual plan or sponsoring organization of a retro group) are entitled to a refund for one coverage period and owe additional premiums for another coverage period, we will deduct the additional premiums due L&I from the refund. We will refund the difference to you. In the event that this adjustment still leaves a premium balance due, we will send you a bill for the balance. If an organization sponsors multiple retro groups and one group earns a refund and the other owes additional premium from a retro adjustment, we will deduct the additional premium from the refund due and issue a net refund to the organization for the difference or bill them for the remaining additional premium as applicable.

**WSR 09-16-145**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed August 5, 2009, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-069.

Title of Rule and Other Identifying Information: WAC 232-16-800 Johnson/Debay's Slough Game Reserve.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515, on September 11-12, 2009, at 8:00 a.m.

Date of Intended Adoption: On or after September 11, 2009.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by August 26, 2009.

Assistance for Persons with Disabilities: Contact Susan Yeager by September 1, 2009, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-16-800, the amendment is intended to clarify and provide opportunity for additional discussions about the reserve boundaries.

Reasons Supporting Proposal: WAC 232-16-800, there is currently confusion about the rationale for current reserve boundaries, and the proposal will allow additional discussions to finalize boundaries through the rule amendment process.

Statutory Authority for Adoption: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

Statute Being Implemented: RCW 77.12.047, 77.12.-020, 77.12.570, 77.12.210, 77.12.040, 77.12.010.

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

Name of Proponent: Washington fish and wildlife commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not affect small businesses or commercial operators.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

August 5, 2009

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 08-197, filed 8/13/08, effective 9/13/08)

**WAC 232-16-800 Johnson/Debay's Slough Game Reserve.** In Skagit County, beginning at the intersection of Francis Road and Debay's Slough Road; then south and west along Francis Road (3090 feet) to white corner marker; then north (1265 feet) to the middle of Debay's Slough (white corner marker); then westerly (2087 feet) along the channel of Debay's Slough to the western tip of the farmed portion of Debay's Island (white corner marker); then northerly (1485 feet) to the south bank of the Skagit River (white corner marker); then easterly (2200 feet) along the south bank of the Skagit River to fence line (white corner marker); then south along fence line (150 feet) to corner post; then southeast 1050 feet to fence line; then east 1090 feet along fence line to fence intersection; then south (300 feet) along fence line to existing tree line (white corner marker); then continue south (835 feet) to south shoreline of Debay's Slough (white corner marker); then easterly and southerly along the west shoreline of Debay's Slough (1770 feet) to the south side of Debay's Slough Road (white corner marker); then east along the south side of Debay's Slough Road to the intersection of Francis Road and the point of beginning.

**WSR 09-16-147**  
**PROPOSED RULES**  
**TRANSPORTATION COMMISSION**  
[Filed August 5, 2009, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-13-047.

Title of Rule and Other Identifying Information: State ferries and toll bridges, WAC 468-300-010, 468-300-020, 468-300-040, 468-300-220. Based on the annual review of Washington state ferry's (WSF) farebox revenue needs, the



proposed rules revise the subject WACs by increasing passenger tolls, vehicle tolls and ferry charter rates.

Hearing Location(s): Puget Sound Regional Council, 1011 Western Avenue, 5th Floor, Seattle, WA, on September 8, 2009, at 1:00 p.m.

Date of Intended Adoption: September 8, 2009.

Submit Written Comments to: Reema Griffith, Executive Director, Transportation Commission, 2404 Chandler Court S.W., Suite 270, Olympia, WA 98501, e-mail griffir@wstc.wa.gov, fax (360) 705-6802, by September 8, 2009.

Assistance for Persons with Disabilities: Contact transportation commission office by September 8, 2009, (360) 705-7070.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to raise the ferry tolls within the specified WACs. The revisions follow the annual review of WSF's farebox revenue needs.

No major effects anticipated.

Reasons Supporting Proposal: WSF's need for additional farebox revenue to meet legislative budget requirements.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.326.

Statute Being Implemented: RCW 47.56.030 and 47.60.326.

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

Name of Proponent: Washington state department of transportation ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Raymond G. Deardorf, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3491.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered this rule and determined that it does not affect more than 10% of one industry or 20% of all industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF is anticipated to take in more farebox revenue from the proposed fare increase at the rate of approximately \$1,650,000 for fiscal year 2010. Ridership drop-off stemming from the fare increase will not cause a net reduction in farebox revenues. Previous experience with fare hikes has shown that WSF gains more money in fare increases than it loses from reduced ridership, if any.

August 5, 2009

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

**WAC 468-300-010 Ferry passenger tolls.**

**EFFECTIVE 03:00 A.M. (~~May 1, 2007~~) October 11, 2009**

ROUTES	Full Fare	Senior/ Disabled	Youth Fare 18 and under	Multiride Media 20 Rides <sup>1</sup>	Monthly Pass <sup>5</sup>	Bicycle Surcharge <sup>2,6</sup>
<del>(Via Passenger-Only Ferry</del>						
<del>*Seattle-Vashon</del>	<del>8.70</del>	<del>4.35</del>	<del>7.40</del>	<del>73.60</del>	<del>117.80</del>	<del>1.00</del> )
Via Auto Ferry	<del>((5.20))</del>	<del>((2.60))</del>	<del>((4.20))</del>	<del>((41.60))</del>	<del>((66.60))</del>	
*Fauntleroy-Southworth	<u>5.30</u>	<u>2.65</u>	<u>4.25</u>	<u>42.40</u>	<u>67.85</u>	1.00
*Seattle-Bremerton						
*Seattle-Bainbridge Island	<del>((6.70))</del>	<del>((3.35))</del>	<del>((5.40))</del>	<del>((53.60))</del>	<del>((85.80))</del>	
*Edmonds-Kingston	<u>6.90</u>	<u>3.45</u>	<u>5.55</u>	<u>55.20</u>	<u>88.35</u>	1.00
	<del>((2.60))</del>		<del>((2.10))</del>	<del>((41.60))</del>	<del>((66.60))</del>	
Port Townsend-Keystone	<u>2.65</u>	1.30	<u>2.15</u>	<u>42.40</u>	<u>67.85</u>	0.50
*Fauntleroy-Vashon						
*Southworth-Vashon	<del>((4.30))</del>	<del>((2.15))</del>	<del>((3.45))</del>	<del>((34.40))</del>	<del>((55.05))</del>	
*Pt. Defiance-Tahlequah	<u>4.45</u>	<u>2.20</u>	<u>3.60</u>	<u>35.60</u>	<u>57.00</u>	1.00
	<del>((3.95))</del>	<del>((1.95))</del>	<del>((3.20))</del>	<del>((31.60))</del>	<del>((50.60))</del>	
*Mukilteo-Clinton	<u>4.10</u>	<u>2.05</u>	<u>3.30</u>	<u>32.80</u>	<u>52.50</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Sunday-Tuesday	<del>((9.85))</del>	<del>((4.90))</del>	<del>((7.90))</del>	<del>((71.20))</del>		2.00 <sup>7</sup>
<u>10.10</u>	<u>5.05</u>	<u>8.10</u>	<u>72.80</u>	N/A		
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor - Wednesday-Sat- urday	<del>((10.95))</del>	<del>((5.45))</del>	<del>((8.80))</del>	<del>((71.20))</del>		2.00 <sup>7</sup>
<u>11.20</u>	<u>5.60</u>	<u>9.00</u>	<u>72.80</u>	N/A		
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	<del>((16.00))</del>	<del>((8.00))</del>	<del>((12.80))</del>			4.00 <sup>8</sup>
<u>16.40</u>	<u>8.20</u>	<u>13.15</u>	N/A	N/A		
From Lopez, Shaw, Orcas and Fri- day Harbor to Sidney@	<del>((6.00))</del>	<del>((3.00))</del>	<del>((4.80))</del>			1.00 <sup>9</sup>
<u>6.15</u>	<u>3.05</u>	<u>4.95</u>	N/A	N/A		
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	<del>((22.00))</del>	<del>((11.00))</del>	<del>((17.60))</del>			5.00 <sup>10</sup>
<u>22.55</u>	<u>11.25</u>	<u>18.10</u>	N/A	N/A		

All fares rounded to the next multiple of \$0.05.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. ~~((Subsequent to the implementation of the Electronic Fare System (EFS) in the fall of 2005, this will be replaced by a 20 ride card valid for 90 days from the date of purchase.))~~ For mail order deliveries, WSF may add additional days to allow for delivery times. ~~((Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.))~~

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE PERMIT - A bicycle pass is available on all routes except: Anacortes/San Juan Island/Sidney for a \$20.00 annual fee subject to meeting WSF specified conditions. The pass is valid for one year. A cyclist with a valid pass shall have the bicycle surcharge waived.

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 until the second Sunday in October).

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

<sup>9</sup>BICYCLE SURCHARGE - This becomes \$2.00 during peak season.

<sup>10</sup>BICYCLE SURCHARGE - This becomes \$8.00 during peak season.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 80% of full fare rounded to the next multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at

half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel. ~~((This program will expire after October 10, 2009.))~~

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect. Due to space limitations, authorized school groups will not be permitted to use one of the passenger-only routes without prior WSF approval.

BUNDLED SINGLE FARE BOOKS - WSF may bundle single fare types into multiride media as a customer convenience. ~~((This media shall be valid only through October 10, 2009, after which time the coupons shall not be accepted for passage.))~~ Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

SHOULDER SEASON SURCHARGE - A 20% surcharge shall be applied to passengers from May 1 through the Wednesday prior to the last Thursday in June, and from the Wednesday after Labor Day through the Saturday prior to the second Sunday in October, except those using frequent user media, on the Anacortes to Lopez, Shaw, Orcas, and Friday Harbor routes. The resulting fare is rounded up to the next \$0.05 if required.

~~((PEAK))~~ SUMMER SEASON SURCHARGE - A ((20)) 30% surcharge shall be applied to passengers from ((May 1 to the second

Sunday in October)) the last Thursday in June through the Tuesday after Labor Day, except those using frequent user fare media, on the Anacortes to Lopez, Shaw, Orcas and Friday Harbor routes. A 10% surcharge shall be applied to passengers during the same time period on all other routes in the system, except those using frequent user media and monthly passes. The resulting fare is rounded up to the next \$0.05 if required.

district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**AMENDATORY SECTION** (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

**WAC 468-300-020 Vehicle under 20', motorcycle, and stowage ferry tolls.**

**EFFECTIVE 03:00 A.M. (May 1, 2007) October 11, 2009**

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Multiride Media 20 Rides <sup>2</sup>
Fauntleroy-Southworth Port Townsend/Key-stone	((8.90)) 9.15	((7.60)) 7.80	((8.90)) 9.15	((142.40)) 146.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((11.55)) 11.85	((9.85)) 10.10	((11.55)) 11.85	((184.80)) 189.60
*Fauntleroy-Vashon *Southworth-Vashon	((14.80))	((12.65))	((14.80))	((118.40))
*Pt. Defiance-Tahlequah	15.20	12.95	15.20	121.60
Mukilteo-Clinton	((6.85)) 7.00	((5.85)) 5.95	((6.85)) 7.00	((109.60)) 112.00
10 Rides - 5 Round Trips				
*Anacortes to Lopez - Sunday-Tuesday	((23.95)) 24.55	((19.00)) 19.50	((23.95)) 24.55	((99.75)) 102.20
*Lopez - Wednesday-Saturday	((26.60)) 27.25	((21.10)) 21.65	((26.60)) 27.25	((99.75)) 102.20
*Shaw, Orcas - Sunday-Tuesday	((28.75)) 29.45	((23.80)) 24.40	((28.75)) 29.45	((119.65)) 122.65
*Shaw, Orcas - Wednesday-Saturday	((31.90)) 32.70	((26.40)) 27.10	((31.90)) 32.70	((119.65)) 122.65
*Friday Harbor - Sunday-Tuesday	((34.15)) 35.05	((29.20)) 30.00	((34.15)) 35.05	((142.15)) 145.90
*Friday Harbor - Wednesday-Saturday	((37.90)) 38.90	((32.40)) 33.30	((37.90)) 38.90	((142.15)) 145.90
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((16.65)) 17.95	((16.65)) 17.95	((16.65)) 17.95	((66.40)) 71.80
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((42.95)) 44.05	((35.95)) 35.85	((42.95)) 44.05	N/A
((Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	27.95	19.95	42.95	N/A))
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((12.80)) 13.15	((9.80)) 10.05	((12.80)) 13.15	N/A
((Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>7</sup>	5.80	2.80	12.80	N/A))

ROUTES	Vehicle Under 20' Incl. Driver One Way	Vehicle Under 20' w/Sr Citizen or Disabled Driver <sup>4</sup>	Vehicle Under 20' Over Height Charge <sup>1</sup>	Multiride Media 20 Rides <sup>2</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((55.75)) <u>57.20</u>	((44.75)) <u>45.90</u>	((55.75)) <u>57.20</u>	N/A

**EFFECTIVE 03:00 A.M. ((May 1, 2007)) October 11, 2009**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1</sup> One Way	Motorcycle Oversize Charge <sup>1</sup>	Motorcycle Frequent User Commuter 20 Rides <sup>2</sup>
Fauntleroy-Southworth Port Townsend/Key-stone	((3.85)) <u>3.95</u>	((2.55)) <u>2.60</u>	1.30	((61.60)) <u>63.20</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5.00)) <u>5.15</u>	((3.30)) <u>3.40</u>	((1.65)) <u>1.70</u>	((80.00)) <u>82.40</u>
*Fauntleroy-Vashon *Southworth-Vashon	((6.40))	((4.25))	((2.10))	((51.20))
*Pt. Defiance-Tahlequah	<u>6.60</u>	<u>4.35</u>	<u>2.15</u>	<u>52.80</u>
Mukilteo-Clinton	((2.95)) <u>3.05</u>	((1.95)) <u>2.00</u>	1.00	((47.20)) <u>48.80</u>
*Anacortes to Lopez - Sunday-Tuesday	((12.70)) <u>13.05</u>	((7.75)) <u>8.00</u>	((2.85)) <u>2.95</u>	((105.75)) <u>108.40</u>
*Lopez - Wednesday-Saturday	((14.10)) <u>14.45</u>	((8.60)) <u>8.85</u>	((3.15)) <u>3.25</u>	((105.75)) <u>108.40</u>
*Shaw, Orcas - Sunday-Tuesday	((13.65)) <u>13.95</u>	((8.70)) <u>8.90</u>	((3.80)) <u>3.85</u>	((113.65)) <u>116.25</u>
*Shaw, Orcas - Wednesday-Saturday	((15.15)) <u>15.50</u>	((9.65)) <u>9.90</u>	((4.20)) <u>4.30</u>	((113.65)) <u>116.25</u>
*Friday Harbor - Sunday-Tuesday	((14.75)) <u>15.10</u>	((9.80)) <u>10.05</u>	((4.90)) <u>5.00</u>	((122.65)) <u>125.65</u>
*Friday Harbor - Wednesday-Saturday	((16.35)) <u>16.75</u>	((10.85)) <u>11.15</u>	((5.40)) <u>5.55</u>	((122.65)) <u>125.65</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((4.75)) <u>5.10</u>	((4.75)) <u>5.10</u>	((4.75)) <u>5.10</u>	N/A
Anacortes to Sidney and Sidney to all destinations	((21.40)) <u>21.95</u>	((13.40)) <u>13.75</u>	((5.40)) <u>5.55</u>	N/A
Travelers with advanced reservations (\$15 fee) Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((7.40)) <u>7.55</u>	((4.40)) <u>4.45</u>	1.40	N/A
Travelers with advanced reservations (\$7 fee) from Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>(7) 6</sup>	N/A	N/A	N/A	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((28.80)) <u>29.50</u>	((17.80)) <u>18.20</u>	((6.80)) <u>6.95</u>	N/A

All fares rounded to the next multiple of \$0.05.

\* These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - All vehicles up to 20' in length and under 7'6" shall pay the vehicle under 20' toll. Vehicles up to 20' but over 7'6" in height shall pay an overheight charge of 100% of the vehicle full fare. Motorcycles with trailers, sidecars, or any vehicle licensed as a motorcycle with three or more wheels will pay an oversize motorcycle charge of 100% of the motorcycle full fare. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for deliv-

ery time. ((Starting on the earliest fare change opportunity (May 1 or the second Sunday in October) at a minimum 6 months after completion of system-wide implementation of the Electronic Fare System (EFS), purchase of this product at a toll booth will be 5% higher, not to exceed an additional \$2.50, at terminals where kiosks are available, except for customers paying with commuter vouchers made available through local transit agencies or qualifying for the senior/disabled and youth fares.))

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of

the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>~~((RESERVATION FARES— These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.~~

<sup>7</sup>~~RESERVATION FARES— These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.)) VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain circumstances.~~

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

~~((PEAK))~~ SHOULDER SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from ((the first Sunday in)) May 1 through the Wednesday prior to the last Thursday in June, and from the Wednesday after Labor Day through the Saturday prior to the second Sunday in October except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. A 114% surcharge shall be applied to the San Juan Islands to Sidney route. The resulting fare is rounded up to the next \$0.05 if required.

SUMMER SEASON SURCHARGE - A 35% surcharge shall be applied to vehicles from the last Thursday in June through the Tuesday after Labor Day, except those using multiride media. A 45% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. A 125% surcharge shall be applied to the San Juan Islands to Sidney route. The resulting fare is rounded up to the next \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en

route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel. ~~((This program will expire after October 10, 2009.))~~

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. ~~((This media shall be valid only through October 10, 2009, after which time the media shall not be accepted for passage.))~~ Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time. Anacortes to San Juan Islands senior/disabled fares will be bundled at the applicable early week price.

AMENDATORY SECTION (Amending WSR 08-08-070, filed 3/31/08, effective 5/1/08)

WAC 468-300-040 Oversize vehicle ferry tolls.

EFFECTIVE 03:00 A.M. (May 1, 2007) October 11, 2009

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Fauntleroy-Southworth	((13.35))	((26.70))	((35.60))	((44.50))	((53.40))	((62.30))	((71.20))	0.90
Port Townsend/Keystone	<u>13.75</u>	<u>27.45</u>	<u>36.60</u>	<u>45.75</u>	<u>54.90</u>	<u>64.05</u>	<u>73.20</u>	
Seattle-Bainbridge Island								1.20
Seattle/Bremerton	((17.35))	((34.65))	((46.20))	((57.75))	((69.30))	((80.85))	((92.40))	
Edmonds-Kingston	<u>17.80</u>	<u>35.55</u>	<u>47.40</u>	<u>59.25</u>	<u>71.10</u>	<u>82.95</u>	<u>94.80</u>	
*Fauntleroy-Vashon								((1.50))
*Southworth-Vashon	((22.20))	((44.40))	((59.20))	((74.00))	((88.80))	((103.60))	((118.40))	
*Pt. Defiance-Tahlequah	<u>22.80</u>	<u>45.60</u>	<u>60.80</u>	<u>76.00</u>	<u>91.20</u>	<u>106.40</u>	<u>121.60</u>	<u>1.55</u>
	((10.30))	((20.55))	((27.40))	((34.25))	((41.10))	((47.95))	((54.80))	0.70
Mukilteo-Clinton	<u>10.50</u>	<u>21.00</u>	<u>28.00</u>	<u>35.00</u>	<u>42.00</u>	<u>49.00</u>	<u>56.00</u>	
*Anacortes to Lopez - Sunday-Tuesday <sup>2</sup>	((35.95))	((71.85))	((95.80))	((119.75))	((143.70))	((167.65))	((191.60))	((2.40))
	<u>36.85</u>	<u>73.65</u>	<u>98.20</u>	<u>122.75</u>	<u>147.30</u>	<u>171.85</u>	<u>196.40</u>	<u>2.50</u>
*Anacortes to Shaw, Orcas - Sunday-Tuesday <sup>2</sup>	((43.15))	((86.25))	((115.00))	((143.75))	((172.50))	((201.25))	((230.00))	((2.90))
	<u>44.20</u>	<u>88.35</u>	<u>117.80</u>	<u>147.25</u>	<u>176.70</u>	<u>206.15</u>	<u>235.60</u>	<u>2.95</u>
*Anacortes to Friday Harbor - Sunday-Tuesday	((51.25))	((102.45))	((136.60))	((170.75))	((204.90))	((239.05))	((273.20))	((3.45))
	<u>52.60</u>	<u>105.15</u>	<u>140.20</u>	<u>175.25</u>	<u>210.30</u>	<u>245.35</u>	<u>280.40</u>	<u>3.55</u>
*Anacortes to Lopez - Wednesday-Saturday <sup>2</sup>	((39.90))	((79.80))	((106.40))	((133.00))	((159.60))	((186.20))	((212.80))	((2.70))
	<u>40.90</u>	<u>81.75</u>	<u>109.00</u>	<u>136.25</u>	<u>163.50</u>	<u>190.75</u>	<u>218.00</u>	<u>2.75</u>
*Anacortes to Shaw, Orcas - Wednesday-Saturday <sup>2</sup>	((47.85))	((95.70))	((127.60))	((159.50))	((191.40))	((223.30))	((255.20))	((3.20))
	<u>49.05</u>	<u>98.10</u>	<u>130.80</u>	<u>163.50</u>	<u>196.20</u>	<u>228.90</u>	<u>261.60</u>	<u>3.30</u>
*Anacortes to Friday Harbor - Wednesday-Saturday	((56.85))	((113.70))	((151.60))	((189.50))	((227.40))	((265.30))	((303.20))	((3.80))
	<u>58.35</u>	<u>116.70</u>	<u>155.60</u>	<u>194.50</u>	<u>233.40</u>	<u>272.30</u>	<u>311.20</u>	<u>3.90</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((25.00))	((49.95))	((66.60))	((83.25))	((99.90))	((116.55))	((133.20))	N/A
	<u>26.95</u>	<u>53.85</u>	<u>71.80</u>	<u>89.75</u>	<u>107.70</u>	<u>125.65</u>	<u>143.60</u>	
<i>International Travel</i>								
Anacortes to Sidney to all destinations - Recreational Vehicles and Buses	((64.45))	((64.45))	((85.90))	((107.40))	((128.85))	((150.35))	((171.80))	((2.15))
	<u>66.10</u>	<u>66.10</u>	<u>88.10</u>	<u>110.15</u>	<u>132.15</u>	<u>154.20</u>	<u>176.20</u>	<u>2.25</u>
Anacortes to Sidney and Sidney to all destinations - Commercial Vehicles	((64.45))	((128.85))	((171.80))	((214.75))	((257.70))	((300.65))	((343.60))	((4.30))
	<u>66.10</u>	<u>132.15</u>	<u>176.20</u>	<u>220.25</u>	<u>264.30</u>	<u>308.35</u>	<u>352.40</u>	<u>4.45</u>
((Travelers with advanced reservations - \$15 fee)								
Anacortes to Sidney and Sidney to all destinations - Recreational Vehicles and Buses	49.45	49.45	70.90	92.40	113.85	135.35	156.80	2.15
Travelers with advanced reservations - (\$15 fee)								
Anacortes to Sidney and Sidney to all destinations <sup>5</sup> - Commercial Vehicles	49.45	113.85	156.80	199.75	242.70	285.65	328.60	4.30))
	((19.20))	((19.20))	((25.60))	((32.00))	((38.40))	((44.80))	((51.20))	((0.65))
	<u>19.75</u>	<u>19.75</u>	<u>26.30</u>	<u>32.90</u>	<u>39.45</u>	<u>46.05</u>	<u>52.60</u>	<u>0.70</u>
Lopez, Shaw, Orcas and Friday Harbor to Sidney - Recreational Vehicles and Buses	((19.20))	((38.40))	((51.20))	((64.00))	((76.80))	((89.60))	((102.40))	((1.30))
- Commercial Vehicles	<u>19.75</u>	<u>39.45</u>	<u>52.60</u>	<u>65.75</u>	<u>78.90</u>	<u>92.05</u>	<u>105.20</u>	<u>1.35</u>
((Travelers with advanced reservations - (\$7 fee) from								
Lopez, Shaw, Orcas and Friday Harbor to Sidney <sup>6</sup> - Recreational Vehicles and Buses	12.20	12.20	18.60	25.00	31.40	37.80	44.20	0.65
- Commercial Vehicles	12.20	31.40	44.20	57.00	69.80	82.60	95.40	1.30))

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	20' To Under 30' Under 7'6" High	20' To Under 30' Over 7'6" High	30' To Under 40'	40' To Under 50'	50' To Under 60'	60' To under 70'	70' To and include 80'	
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup> - Recreational Vehicles and Buses	((83.65)) 85.85	((83.65)) 85.85	((111.50)) 114.40	((139.40)) 143.05	((167.25)) 171.60	((195.15)) 200.25	((223.00)) 228.80	((2.80)) 2.90
- Commercial Vehicles	((83.65)) 85.85	((167.25)) 171.60	((223.00)) 228.80	((278.75)) 286.00	((334.50)) 343.20	((390.25)) 400.40	((446.00)) 457.60	((5.60)) 5.80

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 20 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 20' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 20-30 feet in length and over 7'6" in height shall be charged the 20-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other mechanism designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: ((May 1, 2007)) October 11, 2009 - October ((10, 2009, \$56.50)) 9, 2010, \$58.25 base season, ~~\$(76.25 peak)~~ 78.75 shoulder season, \$84.50 summer season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

((<sup>5</sup>RESERVATION FARES—These fares apply only to travelers that have made advanced reservations and paid the \$15 nonrefundable reservation fee. The reservation fee shall be a \$30 nonrefundable fee when the peak season surcharge is in effect.

<sup>6</sup>RESERVATION FARES—These fares apply only to travelers that have made advanced reservations and paid the \$7 nonrefundable reservation fee. The reservation fee shall be a \$15 nonrefundable fee when the peak season surcharge is in effect.)) VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Refunds may be available under certain special circumstances.

COMMERCIAL VEHICLE RESERVATION FEES - For commercial vehicles traveling with reservations a participation fee (\$200 for summer schedule season, \$100 for each of the other schedule seasons) will be charged. Fees will be collected when reservations are confirmed.

((PEAK)) SHOULDER AND SUMMER SEASON SURCHARGE - A ((peak)) shoulder and summer season surcharge shall apply to all oversize vehicles. The oversize fare shall be determined based on

the ((peak)) shoulder and summer-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

EMERGENCY TRIPS DURING NONSERVICE HOURS - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

DISCLAIMER - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

AMENDATORY SECTION (Amending WSR 07-08-064, filed 3/29/07, effective 5/1/07)

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from ~~((July 1, 2006))~~ October 11, 2009, through June 30, ~~((2007))~~ 2010:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	\$ <del>((1,559.00))</del> <u>1,791.00</u>	\$ <del>((1,384.00))</del> <u>1,481.00</u>
Jumbo	<del>((1,517.00))</del> <u>1,742.00</u>	<del>((1,353.00))</del> <u>1,446.00</u>
Super	<del>((1,428.00))</del> <u>1,650.00</u>	<del>((1,274.00))</del> <u>1,365.00</u>
Evergreen	<del>((1,027.00))</del> <u>1,153.00</u>	<del>((884.00))</del> <u>925.00</u>
Issaquah	<del>((1,073.00))</del> <u>1,256.00</u>	<del>((943.00))</del> <u>1,019.00</u>
<del>((Steel</del>	<del>818.00</del>	<del>711.00))</del>
Rhododendron	<del>((718.00))</del> <u>874.00</u>	<del>((612.00))</del> <u>694.00</u>
Hiyu	<del>((508.00))</del> <u>651.00</u>	<del>((447.00))</del> <u>531.00</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.