WSR 16-13-147
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed June 22, 2016, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-044 and 11-12-047.

Title of Rule and Other Identifying Information: SWCAA 400-020 Applicability. This is an existing section identifying the agency's geographic boundaries and source jurisdiction.

SWCAA 400-030 Definitions. This an existing section containing the definitions of words and phrases used throughout SWCAA 400. Most definitions are identical to corresponding state and federal definitions.

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions. This is a new section that allows for operation of portable sources with valid approvals from other jurisdictions without obtaining an agency approval.

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

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

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

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

SWCAA 400-060 Emission Standards for General Process Units. This is an existing section containing a particulate matter emission standard applicable to all general processes.

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

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

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 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants. This is an existing section identifying review and approval requirements for sources that emit toxic air pollutants.

SWCAA 400-081 Startup and Shutdown. This is an existing section containing provisions addressing sources that cannot comply with technology based emission standards during startup and shutdown.

SWCAA 400-091 Voluntary Limits on Emissions. This is an existing section containing provisions by which a source may voluntarily limit its potential to emit.

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

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 400-103 Operating Permit Fees. This is an existing section governing fee assessment and expenditure for the operating permit program.

SWCAA 400-105 Records, Monitoring and Reporting. This is an existing section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

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 400-111 Requirements for New Sources in a Maintenance Plan Area. This is an existing section identifying requirements specific to new sources located in a maintenance plan area.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas. This is an existing section identifying requirements specific to new sources located in nonattainment areas.

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas. This is an existing section identifying requirements specific to new sources located in attainment or nonclassifiable areas.

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

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 400-140 Protection of Ambient Air Increments. This is an existing section containing provisions for protection of ambient air increments.

SWCAA 400-141 Prevention of Significant Deterioration (PSD). This is an existing section containing provisions for PSD applicable stationary sources.

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 400-190 Requirements for Nonattainment Areas. This is an existing section addressing the development of requirements specific to nonattainment areas.

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 400-230 Regulatory Actions and Civil Penalties. This is an existing section identifying the agency's authority to take regulatory action and issue civil penalties.

SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area. This is a new section identifying requirements for new major stationary sources located in a designated nonattainment area.

SWCAA 400-810 Major Stationary Source and Major Modification Definitions. This is a new section containing definitions applicable to the permitting program for new major stationary sources located in a designated nonattainment area.

SWCAA 400-820 Determining If a New Stationary Source of Modification to a Stationary Source is Subject to These Requirements. This is a new section containing the methodology for determining the applicability of the nonattainment area permitting program to major stationary sources.

SWCAA 400-830 Permitting Requirements. This is a new section identifying permit requirements for new major stationary sources located in a designated nonattainment area.

SWCAA 400-840 Emission Offset Requirements. This is a new section identifying emission offset requirements for major source permitting actions in a designated nonattainment area.

SWCAA 400-850 Actual Emissions - Plantwide Applicability Limitation (PAL). This is a new section adopting by reference the actuals plantwide applicability limit program contained in Section IV.K of 40 C.F.R. 51, Appendix S.

SWCAA 400-860 Public Involvement Procedures. This is a new section identifying public involvement requirements for major source permitting actions in a designated nonattainment area.

SWCAA 400 Appendix A SWCAA Method 9/Visual Opacity Determination Method. This is an existing section containing a protocol for determining visual opacity from stationary sources.

SWCAA 400 Appendix B Description of Vancouver Ozone and Carbon Monoxide Maintenance Plan Boundary. This is an existing section containing a map and legal description of the boundary of the Vancouver ozone and carbon monoxide maintenance plan area.

SWCAA 400 Appendix C Federal Standards Adopted by Reference. This is an existing section containing informational lists of all federal regulations adopted by reference pursuant to SWCAA 400-075 and 400-115.

Hearing Location(s): Office of the Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on September 1, 2016, at 3:00 p.m.

Date of Intended Adoption: September 1, 2016.

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 August 25, 2016.

Assistance for Persons with Disabilities: Contact Tina Hallock by August 25, 2016, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-020 Applicability. The proposed rule changes revise existing language regarding implementation of department of ecology rules and decline adoption of WAC 173-400-930.

The proposed changes are necessary to clarify the applicability of statewide rules.

SWCAA 400-030 Definitions. The proposed rule changes revise existing definitions and add new definitions, and make administrative edits.

The proposed changes are necessary to maintain consistency with state and federal programs.

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions. The proposed rule changes add a new section allowing operation of portable sources with valid approvals from other jurisdictions without obtaining an agency approval.

The proposed changes are being adopted in support of a statewide effort to ease permitting burden for portable sources.

SWCAA 400-040 General Standards for Maximum Emissions. The proposed rule changes add a visible emissions exemption for firefighter training, revise the criteria for enforcement in response to nuisance odors, and make minor administrative edits.

The proposed changes are intended to maintain consistency with similar statewide rules and improve odor enforcement.

SWCAA 400-045 Permit Application for Nonroad Engines. The proposed rule changes clarify program applicability, add exemptions for specific classes of equipment, and explain the applicability of review related fees.

The proposed changes improve implementation of the agency's nonroad engine permitting program.

SWCAA 400-046 Application Review Process for Nonroad Engines. The proposed rule changes update incorporation by reference citations, remove the reference table of

ambient air quality standards, and remove reference to phased projects.

The proposed changes improve implementation of the agency's nonroad engine permitting program.

SWCAA 400-050 Emission Standards for Combustion and Incineration Units. The proposed rule changes add a fuel oil sulfur content limit, clarify the carbonyl standard and measurement correction provisions, update incorporation by reference citations, and remove the compliance schedule table for small municipal waste combustion units.

The proposed changes are necessary to reduce fuel oil emissions, improve program implementation, and maintain consistency with applicable federal standards.

SWCAA 400-060 Emission Standards for General Process Units. The proposed rule changes update incorporation by reference citations for applicable test methods.

The proposed changes are necessary to maintain consistency with applicable federal test methods.

SWCAA 400-070 General Requirements for Certain Source Categories. The proposed rule changes revise requirements for abrasive blasting, update incorporation by reference citations, revise the used oil specification in 400-070 (11)(b), correct a typographical error in 400-070 (13)(b), and make administrative edits.

The proposed changes are necessary to clarify category requirements, correct an existing error, and maintain consistency with state and federal standards.

SWCAA 400-072 Emission Standards for Selected Small Source Categories. The proposed rule changes retitle the section, clarify applicability language, revise notification requirements, add an initial notification requirement for new units, revise applicable requirements for selected categories (small boilers/heaters, emergency engines, rock crushers/aggregate screens), clarify applicability for rock crushers and aggregate screens, and make administrative edits.

The proposed changes are necessary to improve implementation of the small unit notification program and make changes requested by U.S. EPA.

SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants. The proposed rule changes update adoption by reference citations for federal regulations found in 40 C.F.R. 61 and 63, and expand the associated adoption exception list.

The proposed changes are necessary to support the agency's implementation of the affected federal standards.

SWCAA 400-076 Emission Standards for Stationary Sources Emitting Toxic Air Pollutants. The proposed rule changes clarify which version of chapter 173-460 WAC is being implemented and make administrative edits.

The proposed changes are necessary to support the agency's implementation of local toxic air pollutant standards.

SWCAA 400-081 Startup and Shutdown. The proposed rule change adds language requiring emission offsets for allowable emissions from major nonattainment sources during startup and shutdown.

The proposed changes make changes requested by U.S. EPA.

SWCAA 400-091 Voluntary Limits on Emissions. The proposed rule changes make administrative edits to existing language.

The proposed changes improve clarity and consistency with the remainder of the agency's rules.

SWCAA 400-099 Per Capita Fees. The proposed rule changes remove outdated assessment rates from an existing fee table.

The proposed changes improve rule clarity.

SWCAA 400-100 Registration Requirements. The proposed rule changes clarify registration applicability, add a reference to VOC emissions, add provision to revoke approval for delinquent registration fees, and make administrative edits.

The proposed changes support implementation of the registration program and improve clarity.

SWCAA 400-101 Emission Units Exempt from Registration Requirements. The proposed rule changes revise exemption thresholds for internal combustion engines, revise the firefighting exemption to include a reference to SWCAA 476, and make administrative edits.

The proposed changes are necessary to ensure consistency with other proposed SWCAA 400 rule changes.

SWCAA 400-103 Operating Permit Fees. The proposed rule changes clarify fee applicability for fugitive emissions and add an RCW citation to section 400-103(9).

The proposed changes improve program implementation.

SWCAA 400-105 Records, Monitoring and Reporting. The proposed rule changes federal program references, remove provisions for change in raw materials or fuels, update incorporation by reference citations, add general requirements for continuous emission monitoring systems, and make administrative edits.

The proposed changes are necessary to improve the effectiveness of monitoring and reporting at affected sources and maintain consistency with state programs.

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources. The proposed rule changes add a provision for rejection of insufficient test reports and revise alternative method language to include EPA approval.

The proposed changes are necessary to ensure that test/monitoring reports submitted to SWCAA contain all of the information required to determine compliance and to respond to comments from U.S. EPA.

SWCAA 400-107 Excess Emissions. The proposed rule changes add a citation to WAC 173-401-615, revise the required information for excess emission reports, modify the criteria and applicability of unavoidable emission determinations, retitle subsections, and make administrative edits.

The proposed changes are necessary to respond to comments from U.S. EPA.

SWCAA 400-109 Air Discharge Permit Applications. The proposed rule changes add a rule citation for nonattainment major source permitting, add exemptions for portable sources and greenhouse gas sources, add an exemption threshold for PM_{10}, clarify TAP exemption thresholds, revise the list of exempt equipment, clarify the applicability of hourly review fees, clarify SEPA requirements for final determinations, and make administrative edits.

The proposed changes are necessary to maintain consistency with other SWCAA rules, ensure that SEPA requirements are met, and respond to comments from U.S. EPA.

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review). The proposed rule changes add references for implementation of 400-036, specify the version of chapter 173-460 WAC being implemented, remove the reference table of ambient standards, add references for major source permitting, add SEPA requirements for final determinations, revise notification requirements for portable sources, add language regarding LAER determinations for extended major source projects, add a provision allowing revocation of approval for delinquent registration fees, update incorporation by reference citations, and make administrative edits.

The proposed changes are necessary to maintain consistency with overlapping state/federal regulations and to formally incorporate agency permitting policy.

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area. The proposed rule changes revise the definitions applicable to major source permitting, revise introductory language, specify the version of chapter 173-460 WAC being implemented, and make administrative edits.

The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas. The proposed rule changes revise the definitions applicable to major source permitting, revise introductory language, specify the version of chapter 173-460 WAC being implemented, remove existing subsections that overlap with new major source permitting sections, add references for major source permitting, and make administrative edits.

The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-113 Use of Emission Reduction Credits. The proposed rule changes revise the definitions applicable to major source permitting, revise introductory language, specify the version of chapter 173-460 WAC being implemented, add allowable impact level for $PM_{2.5}$, change emission offset and growth allowance citation, and make administrative edits.

The proposed changes are necessary to maintain consistency with state and federal regulations.

SWCAA 400-115 Standards of Performance for New Sources. The proposed rule changes update incorporation by reference citations and update the exception list for incorporation by reference.

The proposed 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 remove ERC registration requirements, add major source permitting references, change expiration period, and make administrative edits.

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

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank. The proposed rule changes revise criteria for granting an ERC, add expiration date as a required element of an ERC order, and make administrative edits.

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

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank. The proposed rule changes remove references to ERC registration and expired public credit actions.

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

SWCAA 400-140 Protection of Ambient Air Increments. The proposed rule changes delete this section from the agency's regulations.

The proposed changes are intended to improve consistency with overlapping state regulations.

SWCAA 400-141 Prevention of Significant Deterioration. The proposed rule changes delete this section from the agency's regulations.

The proposed changes are intended to improve consistency with overlapping state regulations.

SWCAA 400-171 Public Involvement. The proposed rule changes update incorporation by reference citations, revise the list of actions requiring a mandatory public comment period, revise publication requirements to allow the use of media other than newspapers, revise required information for comment period notices, add requirement for 30 day notice prior to public hearing, clarify application of 400-171 to other regulatory programs, and make administrative edits.

The proposed changes are intended to improve the public involvement process and ensure consistency with applicable federal regulations.

SWCAA 400-190 Requirements for Nonattainment Areas. The proposed rule changes add major source permitting references to the section.

The proposed changes improve internal consistency with regards to applicable major source permitting requirements.

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques. The proposed rule changes revise vertical dispersion requirement to allow for alternative stack configurations and add an exemption to the requirement.

The proposed changes allow more flexibility for permitting new sources.

SWCAA 400-230 Regulatory Actions and Civil Penalties. The proposed rule changes add the term air discharge permit and remove citation of chapter 70.120 RCW and FCAA Section 113 (e)(2) from civil penalty citations.

The proposed changes improve internal rule consistency and respond to comments made by U.S. EPA.

SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area. The proposed rule changes add a new rule section detailing the applicability of new source review for major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-810 Major Stationary Source and Major Modification Definitions. The proposed rule changes add a new section containing definitions specific to review of new major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-820 Determining If a New Stationary Source of Modification to a Stationary Source is Subject to These Requirements. The proposed rule changes add a new section detailing the applicability determination procedure for review of new major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-830 Permitting Requirements. The proposed rule changes add a new section containing permit requirements for new major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-840 Emission Offset Requirements. The proposed rule changes add a new section containing emission offset requirements for new major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-850 Actual Emissions - Plantwide Applicability Limitation (PAL). The proposed rule changes add a new section that incorporates by reference federal provisions for issuing PAL permits to major sources.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400-860 Public Involvement Procedures. The proposed rule changes add a new section containing public involvement requirements for permitting actions for major sources located in a nonattainment area.

The proposed changes are necessary to comply with state and federal major source permitting requirements.

SWCAA 400 Appendix A SWCAA Method 9/Visual Opacity Determination Method. The proposed rule changes update incorporation by reference citations.

The proposed change is necessary for proper implementation of the affected requirement.

SWCAA 400 Appendix B Description of Vancouver Ozone and Carbon Monoxide Maintenance Plan Boundary. The proposed rule changes update the graphic map of the maintenance plan area.

The proposed change is intended to improve enforcement of various maintenance plan provisions by making the maintenance plan area easier to identify.

SWCAA 400 Appendix C Federal Standards Adopted by Reference. The proposed rule changes update the informational lists of adopted federal standards.

The proposed change is intended to improve implementation of the affected standards.

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: Uri Papish, 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 22, 2016
Uri Papish
Executive Director

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

SWCAA 400-020 Applicability

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

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

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

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

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

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

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

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

SWCAA 400-030 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(15) **"Best available control technology"** (BACT) means an emission limitation (including a visible emission standard) based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter 70.94 RCW which would be emitted from or which results from any new or modified "stationary source," which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such "stationary source" or modification through application of production processes and available

methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any air pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, ((~~Part~~)) 61, 62 and ((~~Part~~)) 63. Emissions from any "stationary source" utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

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

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

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

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

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

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park;

(h) Pasayten Wilderness; and

(i) Spokane Indian Reservation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Coal cleaning plants (thermal dryers),

(iii) Kraft pulp mills,

(iv) Portland cement plants,

(v) Primary zinc smelters,

(vi) Iron and steel mills,

(vii) Primary aluminum ore reduction plants,

(viii) Primary copper smelters,

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

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

(xi) Petroleum refineries,

(xii) Lime plants,

(xiii) Phosphate rock processing plants,

(xiv) Coke oven batteries,

(xv) Sulfur recovery plants,

(xvi) Carbon black plants (furnace process),

(xvii) Primary lead smelters,

(xviii) Fuel conversion plants,

(xix) Sintering plants,

(xx) Secondary metal production plants,

(xxi) Chemical process plants,

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

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

(xxiv) Taconite ore processing plants,

(xxv) Glass fiber processing plants,

(xxvi) Charcoal production plants; and

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

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

(((~~(44)~~))) (47) **"Federal Clean Air Act"** (FCAA) means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as

last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

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

(a) Alpine Lakes Wilderness;

(b) Glacier Peak Wilderness;

(c) Goat Rocks Wilderness;

(d) Mount Adams Wilderness;

(e) Mount Rainier National Park;

(f) North Cascades National Park;

(g) Olympic National Park; and

(h) Pasayten Wilderness.

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

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

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

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

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

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

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

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

(((~~54~~))) (57) **"Greenhouse gas"** means ((~~a gas that has the ability to contribute to a greenhouse effect in the ambient atmosphere. Greenhouse gases include~~)), for the purpose of these regulations, any or all of the following gases: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), sulfur hexafluoride (SF_6), hydrofluorocarbons (HFCs), and perfluorocarbons (PFCs).

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

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

(((~~57~~))) (60) **"Installation"** means the act of installing, placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(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 maintenance plan, attainment, or unclassified areas (((~~(SWCAA 400-113)~~))), means the same as the definition found in WAC 173-400-710. ((~~any physical change in, or change in the method of operation of, a "major stationary source" that would result in a significant net emissions increase of any pollutant subject to regulation under the Federal Clean Air Act.~~

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

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

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

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

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

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

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

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

~~(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.~~))

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

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

~~(A) 70 tons per year of PM_{10} in any "serious" nonattainment area for PM_{10}.~~

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

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

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

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

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

~~(B) Kraft pulp mills;~~

~~(C) Portland cement plants;~~

~~(D) Primary zinc smelters;~~

~~(E) Iron and steel mills;~~

~~(F) Primary aluminum ore reduction plants;~~

~~(G) Primary copper smelters;~~

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

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

~~(J) Petroleum refineries;~~

~~(K) Lime plants;~~

~~(L) Phosphate rock processing plants;~~

~~(M) Coke oven batteries;~~

~~(N) Sulfur recovery plants;~~

~~(O) Carbon black plants (furnace process);~~

~~(P) Primary lead smelters;~~

~~(Q) Fuel conversion plants;~~

~~(R) Sintering plants;~~

~~(S) Secondary metal production plants;~~

~~(T) Chemical process plants;~~

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

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

~~(W) Taconite ore processing plants;~~

~~(X) Glass fiber processing plants;~~

~~(Y) Charcoal production plants;~~

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

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

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

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

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

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

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

~~(C) Kraft pulp mills;~~

~~(D) Portland cement plants;~~

~~(E) Primary zinc smelters;~~

~~(F) Iron and steel mill plants;~~

~~(G) Primary aluminum ore reduction plants;~~

~~(H) Primary copper smelters;~~

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

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

~~(K) Petroleum refineries;~~

~~(L) Lime plants;~~

~~(M) Phosphate rock processing plants;~~

~~(N) Coke oven batteries;~~

~~(O) Sulfur recovery plants;~~

~~(P) Carbon black plants (furnace process);~~

~~(Q) Primary lead smelters;~~

~~(R) Fuel conversion plants;~~

~~(S) Sintering plants;~~

~~(T) Secondary metal production plants;~~

~~(U) Chemical process plants;~~

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

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

~~(X) Taconite ore processing plants;~~

~~(Y) Glass fiber processing plants; and~~

~~(Z) Charcoal production plants.~~

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

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

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

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

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

~~(B) Kraft pulp mills;~~

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

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

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

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

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

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

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

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

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

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

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

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

(((~~(69)~~))) (72) **"National Ambient Air Quality Standard"** (NAAQS) means an ambient air quality standard set forth in 40 CFR Part 50, which includes standards for carbon monoxide (CO), particulate matter (PM_{10}, $PM_{2.5}$), ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(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 180 calendar days.~~))

(((~~(74)~~))) (77) **"New source"** means one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(((~~80~~))) (83) **"Notice of Construction application"** (NOC) means a written application requesting approval for installation, replacement, modification, or other alteration of an emission unit at an air contaminant source or replacement or substantial alteration of control technology at an existing "stationary source." Affected activities include, but are not limited to, equipment modifications or alterations, changes to process or control equipment, establishment of emission limits, installation of "new sources," control technology determinations, PSD determinations, and other items specified by the Agency. "Notice of Construction application" means the same as "air discharge permit application." (For more information refer to SWCAA 400-109.)

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

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

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

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

(((~~85~~))) (88) **"Order"** means any regulatory order issued by the Agency or Ecology pursuant to Chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.-152, 70.94.153 and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, air discharge permit, nonroad engine permit, compliance schedule order, consent order, order of denial, order of violation, order of prevention, order of discontinuance, administrative order, and regulatory order.

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

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

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

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

(((~~90~~))) (93) **"Parts per million by volume"** (ppmv) means parts of a contaminant per million parts of gas or carrier medium, by volume.((~~. When calculating or measuring~~

~~the ppmv of a given gas or carrier stream, such measurement or calculation shall be~~)) exclusive of water ((~~and particulate matter~~)) or particulates.

(((~~91~~))) (94) **"Permanent shutdown"** means permanently stopping or terminating the operation of a "stationary source" or "emission unit." Except as provided in subsections (a), (b) and (c), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown and the payment status of registration fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(((~~106~~))) (110) **"Regulatory order"** means an order issued by the Agency or Ecology to an air contaminant source((~~,~~)) to achieve compliance with 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 definitions of "Order," "Order of

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

(((~~107~~))) (111) **"Residual Oil"** means crude oil, fuel oil that does not comply with the specifications for "distillate oil," and all fuel oil numbers 4, 5, and 6 as defined by the American Society for Testing and Materials in ASTM D396-01.

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

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

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

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

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

~~*Pollutant*~~	~~*Emission Rate*~~
~~Carbon monoxide:~~	~~100 tons per year (tpy)~~
~~Nitrogen oxides:~~	~~40 tpy~~
~~Sulfur dioxide:~~	~~40 tpy~~
~~Volatile organic compounds:~~	~~40 tpy~~
~~Lead:~~	~~0.6 tpy~~
~~PM_{10}:~~	~~15 tpy~~))

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

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

~~*Pollutant*~~	~~*Emission Rate*~~
~~Carbon monoxide:~~	~~100 tons per year (tpy)~~
~~Nitrogen oxides:~~	~~40 tpy~~
~~Sulfur dioxide:~~	~~40 tpy~~
~~Particulate matter:~~	~~25 tpy - PM~~ ~~15 tpy - PM_{10}~~
~~Volatile organic compounds:~~	~~40 tpy~~
~~Fluorides:~~	~~3 tpy~~
~~Lead:~~	~~0.6 tpy~~
~~Sulfuric acid mist:~~	~~7 tpy~~
~~Hydrogen sulfide (H_2S):~~	~~10 tpy~~
~~Total reduced sulfur (including H_2S):~~	~~10 tpy~~
~~Reduced sulfur compounds (including H_2S):~~	~~10 tpy~~
~~Municipal waste combustor organics: (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)~~	~~3.2 grams per year (0.112 oz. per year or 49 grains per year)~~
~~Municipal waste combustor metals: (measured as particulate matter)~~	~~14 megagrams per year (15 tpy)~~
~~Municipal waste combustor acid gases: (measured as sulfur dioxide and hydrogen chloride)~~	~~36 megagrams per year (40 tpy)~~
~~Municipal solid waste landfill emissions: (measured as nonmethane organic compounds)~~	~~45 mega grams per year (50 tpy)~~
~~Ozone-depleting substances (in effect on July 1, 2000):~~	~~100 tpy~~

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

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

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

(((~~112~~))) (116) **"Source"** means all of the emission units (including quantifiable fugitive emissions) that are located on one or more contiguous and adjacent properties, and are

under the control of the same person (or persons under common control), whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual (1972)*, as amended by the 1977 supplement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane(HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1.2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$); 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2- (trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; and perfluorocarbon compounds that fall into these classes:

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

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

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

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

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

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

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

(i) Tertiary butyl acetate.

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

NEW SECTION

SWCAA 400-036 Portable Sources From Other Washington Jurisdictions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SWCAA 400-040 General Standards for Maximum Emissions

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

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

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

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

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

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

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

(e) Exemptions from the twenty percent opacity standard.

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

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

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

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

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

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

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

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

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

(4) **Odors.**

(a) ((~~Any~~)) No person ((~~who~~)) shall cause or allow the generation of any odor from any "source" or activity, which may unreasonably interfere with any other property owner's use and enjoyment of his property. ((~~must use~~)) Recognized good practice and procedures must be used to reduce ((~~these~~)) odors to a reasonable minimum. The Agency may take enforcement action under this section if it documents the following:

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

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

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

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

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

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

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

~~(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 any "source" of fugitive dust shall take reasonable precautions to prevent fugitive dust from becoming airborne and shall maintain and operate the "source" to minimize emissions.

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

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

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

SWCAA 400-045 Permit Application for Nonroad Engines

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) **Application Fees.** A filing fee of $500 plus a review fee, as shown in Table A, shall be submitted with the ((~~applicant~~)) application prior to Agency review. If additional types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B]).

Expedited Application Review

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

TABLE A

Nonroad Engine Permit Application Review Fees

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

TABLE B

Additional Review Fees

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

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

(5) **Agency actions.** Each acceptable and complete 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 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-046 Application Review Process for Nonroad Engines

(1) **Applicability.**

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

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

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

(2) **Requirements.**

(a) Provided that all review requirements are met, a nonroad 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 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 *40 CFR 51.166(c)*~~ ~~Class I µg/m³~~	~~Class II µg/m³~~	~~National Ambient Air Quality Standards (NAAQS) *40 CFR 50*~~ ~~Primary Standard µg/m³ (ppm)~~	~~Secondary Standard µg/m³ (ppm)~~	~~State Ambient Air Quality Standards *173-170, 174, and 175 WAC*~~ ~~Ambient Standard µg/m³ (ppm)~~
~~Carbon Monoxide (CO)~~	~~8-Hour~~ ~~1-Hour~~	~~-~~ ~~-~~	~~-~~ ~~-~~	~~10,000[b] (9.0)~~ ~~40,000[b] (35.0)~~	~~-~~ ~~-~~	~~10,000[b] (9.0)~~ ~~40,000[b] (35.0)~~
~~Nitrogen Dioxide (NO_2)~~	~~Annual[a] (arithmetic mean)~~	~~2.5~~	~~25~~	~~100 (0.05)~~	~~100 (0.05)~~	~~100 (0.05)~~
~~Ozone (O_3)~~	~~1-Hour[e]~~ ~~8-Hour[f]~~	~~-~~ ~~-~~	~~-~~ ~~-~~	~~(0.12)~~ ~~(0.075)~~	~~(0.12)~~ ~~(0.075)~~	~~(0.12)~~ ~~-~~
~~Sulfur Dioxide (SO_2)~~	~~Annual[a]~~ ~~24-Hour~~ ~~3-Hour~~ ~~1-Hour~~	~~2~~ ~~5~~ ~~25~~ ~~-~~	~~20~~ ~~91~~ ~~512~~ ~~-~~	~~80 (0.03)~~ ~~365[b] (0.14)~~ ~~-~~	~~-~~ ~~-~~ ~~1,300[b] (0.50)~~ ~~-~~	~~53 (0.02)~~ ~~260[b] (0.10)~~ ~~-~~ ~~1,065[b] (0.40)~~
~~Lead~~	~~Quarterly Average~~	~~-~~	~~-~~	~~1.5~~	~~1.5~~	~~1.5~~
~~Particulate Matter less than 10 µm (PM_{10})~~	~~Annual (arithmetic mean)~~ ~~24-Hour[i]~~	~~4~~ ~~8~~	~~17~~ ~~30~~	~~150[b]~~	~~150[b]~~	~~50~~ ~~150[b]~~
~~Particulate Matter less than 2.5 µm ($PM_{2.5}$)~~	~~Annual[g] (arithmetic mean)~~ ~~24-Hour[h]~~	~~-~~ ~~-~~	~~-~~ ~~-~~	~~15~~ ~~35~~	~~15~~ ~~35~~	~~-~~ ~~-~~

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

~~[a] Never to be exceeded.~~

~~[b] Not to be exceeded more than once per year.~~

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

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

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

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

~~[g] Based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations.~~

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

~~[i] Based on the 99th percentile of 24-hour PM_{10} concentrations at each monitor.~~

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

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

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

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue

a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

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

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

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

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

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

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

(8) **Change of conditions.**

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

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

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

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

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

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

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

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

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

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

SWCAA 400-050 Emission Standards for Combustion and Incineration Units

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

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

(3) **Incinerators.**

(a) For any incinerator, no person shall cause or permit emissions in excess of one hundred (100) ppm of total carbonyls as measured by ((~~applicable sampling methods or~~)) Ecology Test Method 14. Total carbonyls means the concen-

tration of organic compounds containing the =C=O radical. An applicable EPA reference method or other procedures approved in advance by the Agency ((~~including but not limited to those methods contained in "Source Test Manual - Procedures for Compliance Testing," State of Washington, Department of Ecology~~)) may be used to collect and analyze for the same compounds collected in Ecology Test Method 14.

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

(((~~(3)~~))) (4) **Measurement correction.** Measured concentrations for combustion and incineration units shall be corrected ((~~in accordance with the following listing. "Source categories" not identified shall have measured concentrations for volumes corrected~~)) to 7% oxygen, except when the Agency determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit. ((~~Concentrations for the following "source categories" shall normally be corrected to the following oxygen concentrations: gas, diesel, and oil-fired boilers: 3%; medical/hospital waste incinerators: 12%; natural gas turbines, asphalt mixers and aggregate dryers: 15%. Concentrations from thermal oxidizers and open/enclosed flares shall be reported as measured.~~))

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

(a) Definitions.

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

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

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

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

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

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

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

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

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

(i) Pathological waste incineration units. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on January 30, ((~~2001~~)) 2015) that meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

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

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

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

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

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

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

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

(B) Units burning greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, Subparts Ea (in effect on July 1, ((~~2000~~)) 2015), Eb (in effect on July 1, ((~~2000~~)) 2015), and AAAA (in effect on June 1, ((~~2001~~)) 2015), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

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

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

(iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Inciner-

ators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, ((~~2000~~)) 2015);

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

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

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

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

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

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

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

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

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

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

(B) Units regulated under Subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, ((~~2002~~)) 2015).

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

(ix) Air curtain incinerators. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on July 1, ((~~2002~~)) 2015).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

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

(x) Cyclonic barrel burners. See 40 CFR 60.2265 (in effect on July 1, ((~~2002~~)) 2015).

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

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

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

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

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

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

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

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

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

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

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

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

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on July 1, ((~~2002~~)) 2015).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on July 1, ((~~2002~~)) 2015) mean the CISWI unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart CCCC by reference.

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

(i) The federal rule contains these major components:

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

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

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

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

(E) Performance testing requirements in 60.2690 through 60.2725;

(F) Initial compliance requirements in 60.2700 through 60.2725;

(G) Continuous compliance requirements in 60.2710 through 60.2725;

(H) Monitoring requirements in 60.2730 through 60.2735;

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

(J) Title V operating permits requirements in 60.2805;

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

(L) Definitions in 60.2875; and

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

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

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

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

(v) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR 60.2805(a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, Chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

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

(A) The final control plan (Increment 1) must be submitted no later than ((~~January 1, 2004~~)) July 1, 2003. (See Increment 1 in Table 1.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on July 1, ((~~2002~~)) 2015).

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

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

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

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

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

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

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

(xi) Air curtain incinerators. If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on July 1, ((~~2002~~)) 2015) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on July 1, ((~~2002~~)) 2015).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, ((~~2002~~)) 2015).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on July 1, ((~~2002~~)) 2015), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (in effect on July 1, ((~~2002~~)) 2015).

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

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, ((~~2002~~)) 2015) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on July 1, ((~~2002~~)) 2015) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on July 1, ((~~2002~~)) 2015).

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

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

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on July 1, ((~~2002~~)) 2015) to calculate the combustion capacity of a municipal waste combustion unit.

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

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through

60.1905, and 60.1935 (in effect on July 1, ((~~2002~~)) 2015), which is adopted by reference.

(i) The rule contains these major components:

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

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

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

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

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935; and

(L) Tables 2 through 8.

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

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

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

(C) "Administrator" includes the permitting agency;

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

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

(h) Compliance schedule.

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

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units ((~~comply with Table 1~~)).

((~~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~~)) 2015).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, Subpart BBBB (in effect on ((~~July 1, 2002~~)) February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

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

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

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

SWCAA 400-060 Emission Standards for General Process Units

General process units shall meet all applicable provisions of SWCAA 400-040, and no person shall cause or permit the emission of particulate material from any general process operation in excess of 0.23 grams per dry cubic meter of exhaust gas at standard conditions (0.1 grain/dscf). EPA test methods from 40 CFR Parts 51, 60, 61 and 63 as in effect July 1, ((~~2002~~)) 2015 and any other appropriate test procedures approved in advance by both the Agency and EPA shall be used to determine compliance.

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

SWCAA 400-070 General Requirements for Certain Source Categories

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

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

(2) **Hog fuel boilers.**

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

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

(3) **Orchard heating.**

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

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

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

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

(6) **Gasoline dispensing facilities.**

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

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

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

(7) **Perchloroethylene dry cleaners.**

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

(b) Applicability.

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

TABLE 1.
PCE Dry Cleaner Source Categories

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

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

(c) Operations and maintenance record.

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

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

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

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

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

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

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

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

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

(IV) The date the temperature was taken;

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

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

(II) The date the concentration was measured;

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

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

(G) All receipts of PCE purchases; and

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

(d) General operations and maintenance requirements:

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

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

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

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

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

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

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

TABLE 2.
Minimum PCE Vapor Vent Control Requirements

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

(e) Inspection.

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

TABLE 3.
Minimum Inspection Frequency

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

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

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

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

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

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

(f) Repair requirements:

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

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

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

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

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

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

(i) Outlet air temperature requirements:

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

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

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

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

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

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

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

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

(ii) Inlet air temperature requirements:

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

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

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

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

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

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

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

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

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

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

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

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn

into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

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

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

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

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

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

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

(iv) The colorimetric tube must meet these requirements:

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

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

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

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

(A) The sampling port must be easily accessible.

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

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

(8) **Abrasive blasting.**

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

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

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

~~(d)~~)) All abrasive blasting of materials that contain, or have a coating ((~~or~~)) that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance shall be analyzed prior to blast 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~~)) 2015, are adopted by reference.

(10) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on 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 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

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

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

(e) Test methods and procedures:

(i) An MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic com-

pound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

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

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

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

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

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

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

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

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

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

(h) Gas collection and control systems:

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

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

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

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

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

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

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

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

(i) Air operating permit:

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

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

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

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

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

(11) **Used oil burners.**

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

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

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

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

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

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

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

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

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

(i) Arsenic - 5 ppm maximum;

(ii) Ash - 0.1 percent maximum;

(iii) Cadmium - 2 ppm maximum;

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

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

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

(vii) Sulfur - 1.0 percent maximum;

(((~~v~~))) (viii) Flash point - 100 ºF minimum; and

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

~~energy recovery unless the presumption of mixing can be successfully rebutted.~~))

((~~Note: 40 CFR 761.20(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)~~))) Applicability. The following equipment is subject to the provisions of SWCAA 400-109 and 400-110:

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

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

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

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

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

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

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

(b) Requirements.

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

(((~~(c)~~))) (ii) On or after January 1, 2013, no person shall offer for sale, or install, a water heater that emits NO_X at levels in excess of 20 ppmv at 3% O_2, dry (((~~0.067~~)) 0.024 lb per million Btu of heat input).

(14) **Rendering plants.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~testing, and reporting~~)) emission standards and other requirements specified for the applicable source category. ((~~Any emission unit that fails to maintain continuing compliance with applicable requirements becomes subject to SWCAA 400-109.~~)) Emission units subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

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

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

(1) **Exceptions.**

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

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

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

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

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

(a) Location of installation and/or operation;

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

(c) Applicable processing fee;

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

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

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

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

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

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

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

(5) **Source categories.**

(a) **Coffee roasters.**

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

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

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

(A) Afterburner operating temperature shall be recorded weekly;

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

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

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

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

(vi) **Reporting requirements.**

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

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

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

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

(II) Quantity of coffee roasted; and

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

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

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

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

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

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO_X and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O_2, dry, 1-hr avg). EPA test methods from 40 CFR 60, as in effect on July 1, 2015, shall be used to determine compliance.

(iii) **General requirements.**

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

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

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

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

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

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

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

(v) **Testing requirements.**

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

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO_X or 50 ppmvd CO, corrected to 3% O_2, the owner or operator shall either perform 60 minutes of additional monitoring to more accurately quantify CO and NO_X emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO_X or 50 ppmvd CO, corrected to 3% O_2.

(vi) **Reporting requirements.**

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

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

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

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

(I) Quantity of fuel consumed; and

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

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) **Reporting requirements.**

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

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

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

(I) Hours of engine operation; and

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

(d) **Petroleum dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use petroleum solvent and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total 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, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

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

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

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

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

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

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

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

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

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

(II) Machine door gaskets and seating;

(III) Filter gaskets and seating;

(IV) Pumps;

(V) Solvent tanks and containers;

(VI) Water separators;

(VII) Distillation units;

(VIII) Diverter valves; and

(IX) Filter housings.

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

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

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

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

(vi) **Reporting requirements.**

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

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

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

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

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

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

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

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

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

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

(iii) **General requirements.**

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

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

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

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

(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.~~)) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" shall comply with the applicable requirements of that regulation.

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

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

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

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

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

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

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

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

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

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

(vi) **Reporting requirements.**

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

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

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

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

(II) Air emissions of criteria air pollutants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SWCAA 400-081 Startup and Shutdown

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

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

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

SWCAA 400-091 Voluntary Limits on Emissions

(1) Voluntary limits on emissions and limitations on potential to emit or process parameters or throughputs may be requested by the owner or operator of any source or "stationary source" by submittal of a complete air discharge permit application as provided in SWCAA 400-109. Confidential information shall be identified as set forth in SWCAA 400-270. Upon completion of review of the application, the Agency shall issue a regulatory order or air discharge permit limiting that source's or "stationary source's" potential to emit to an amount agreed to by the owner or operator and the Agency.

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

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

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

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

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

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

SWCAA 400-099 Per Capita Fees

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

Assessment Rate	*Effective Date*
((~~$0.30 per citizen~~	~~April 11, 1999~~
~~$0.31 per citizen~~	~~January 1, 2006~~
~~$0.32 per citizen~~	~~January 1, 2007~~))
$0.33 per citizen	January 1, 2008

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

SWCAA 400-100 Registration Requirements

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

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

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

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

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

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

(2) **General requirements**.

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

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

(3) **Registration fees.** An annual registration fee shall be paid before the Agency may register any emission unit. Annual registration fees are based on the number of registered emission units and the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or emission units that permanently 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" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the following schedule:

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

Exceptions:

(a) An annual registration fee of $50.00 shall be charged to each gasoline transport tank.

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

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

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

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

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

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

(ii) Effective date of the shutdown or transfer;

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

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

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

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

(ii) Effective date of the transfer;

(iii) Description of the affected emission units; and

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

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

(6) **Inspections.**

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

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

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person shall obstruct, hamper or interfere with any such inspection.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-101 Emission Units Exempt from Registration Requirements

(1) **Applicability.** The emission units listed in subsection (4) of this section are exempt from the registration requirements of SWCAA 400-100. If an exempt emission unit is located at a "stationary source" that is otherwise required to be registered, the Agency may require that the exempt emission unit be included in the "stationary source" registration. If an exempt emission unit is located at a Title V facility, it must be included in the facility's Title V permit in accordance with Chapter 173-401 WAC. The owner or operator of any emission unit exempted from registration under this section shall maintain documentation sufficient to verify that the emission unit is entitled to exemption under this section.

An exemption from new source review pursuant to SWCAA 400-109 shall not be construed as an exemption from registration under this section.

(2) Wherever a "stationary source" has multiple emission units, which are similar in function and purpose, exemption status shall be determined based on aggregate capacity (e.g., horsepower, Btu per hour, airflow, etc.) or the aggregate emissions of similar emission units.

(3) **Exempt emission thresholds.** A "stationary source" shall be exempt from registration if the uncontrolled potential to emit from all emission units at that site or facility is less than all of the applicable emission thresholds listed below. To qualify for an emission threshold exemption, the owner or operator shall submit to the Agency a summary of all activities/equipment that emit air pollutants, and calculate potential emissions from the facility based on maximum levels of production/operation. The Agency shall review and validate the submitted documentation prior to granting an exemption.

Pollutant	*Exemption Threshold*
Criteria pollutants and VOC	1.0 tpy, combined
Lead	0.005 tpy (10 lb/yr)
Ozone depleting substances	1.0 tpy, combined (as defined in SWCAA 400-030)
Toxic air pollutants	1.0 tpy (combined) or less than applicable SQER per Chapter 173-460 WAC, whichever is less.

(4) **Exempt equipment and activities.**

(a) Asphalt roofing and application equipment (not manufacturing or storage equipment).

(b) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families.

(c) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes.

(d) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents.

(e) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business.

(f) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment).

(g) Retail paint sales establishments (not including manufacturing).

(h) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing.

(i) Sewing equipment.

(j) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other structures provided operations are in compliance with the provisions of SWCAA 400-070(8).

(k) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-101(3). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses that do not exceed the

emission thresholds specified in SWCAA 400-101(3). This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations.

(l) Residential wood heaters (e.g., fireplaces and woodstoves).

(m) Office equipment, operations and supplies.

(n) Internal combustion engines used for emergency service that have an individual power rating of less than 50 horsepower.

(o) Internal combustion engines used for emergency service that are located at a facility with a maximum aggregate power rating less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered.

(((~~o~~))) (p) Steam cleaning equipment used exclusively for that purpose.

(((~~p~~))) (q) Refrigeration systems that are not in air pollution control service.

(((~~q~~))) (r) Housekeeping activities and equipment.

(((~~r~~))) (s) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks.

(((~~s~~))) (t) Natural and forced air vents and stacks for bathroom/toilet facilities.

(((~~t~~))) (u) Personal care activities.

(((~~u~~))) (v) Lawn and landscaping activities.

(((~~v~~))) (w) Flares used to indicate danger to the public.

(((~~w~~))) (x) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425 and SWCAA 476.

(((~~x~~))) (y) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-103 Operating Permit Fees

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW 70.94.161, shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

(a) A volatile organic compound.

(b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard (NAAQS) has been promulgated except that carbon monoxide shall be excluded from this reference. PM_{10} emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "stationary source." Emission test data is required to demonstrate the PM_{10} portion of total particulate matter emissions.

(((~~d~~))) Fugitive pollutant emissions shall be included in determining the fee assessment for a "stationary source." Emissions of each ((~~regulated~~)) fee applicable pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW 70.94.162, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment methodology as described below:

(a) Participation Fee. Fees sufficient to cover one-third of the Board approved Operating Permit Program budget shall be assessed such that each "stationary source" shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

PF=B÷3÷n, where;

PF	=	Participation fee portion of total fee
B	=	The total Agency budget for the Operating Permit Program
n	=	The number of 40 CFR Part 70 sources

(b) Emissions Fee. Fees sufficient to cover one-third of the budget shall be assessed such that each "stationary source" shall pay an amount equal to that "stationary source's" portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The emissions portion of the fee shall be assessed according to the following formula:

EF = B÷3*SE÷TE, where:

EF	=	Emissions fee portion of total fee
B	=	The total Agency budget for the Operating Permit Program

SE	=	The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 "stationary source" (not to exceed 7,500 tons per pollutant)
TE	=	The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 "stationary sources"

(c) Complexity Fee. Fees sufficient to cover one-third of the budget shall be assessed such that each 40 CFR Part 70 "stationary source" shall pay an amount equal to that "stationary source's" portion of the total emission units at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" emission units to the total number of emission units located at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The complexity portion of the fee shall be assessed according to the following formula:

CF = B÷3*SU÷TU, where:

CF	=	Complexity fee portion of total fee
B	=	The total Agency budget for the Operating Permit Program
SU	=	The number of emission units at a "stationary source"
TU	=	The number of emission units at all 40 CFR Part 70 "stationary sources"

(d) Total Fee. The amount of the annual assessed fees for each 40 CFR Part 70 "stationary source" shall be the sum of the participation, emissions and complexity fee portions (PF+EF+CF = Total Fee). The sum of the total fees for all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.

(5) **Accountability.**

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

(6) **Fee eligible activities.**

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

(7) **Activities not eligible for fee.**

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) **Schedules of payment.** Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) **Late fee payments.** Delinquent fees are subject to a late fee equal to three times the operating permit fee as provided under RCW 70.94.431(7). The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) **Transfer of ownership.** Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-105 Records, Monitoring and Reporting

The owner or operator of each registered or Title V "source" shall maintain records of the type and quantity of emissions from the "source" and other information deemed necessary to determine whether the "source" is in compliance with applicable emission limitations, operating limitations, and control measures. "Sources" that are not subject to the registration requirements of SWCAA 400-100 because they are exempt under SWCAA 400-101 shall maintain records and other information necessary and sufficient to substantiate that their small quantity emissions are less than the applicable thresholds.

(1) **Emission inventory.** The owner(s) or operator(s) of all registered and Title V "sources" shall submit an inventory of emissions from the "source" each year to the Agency. The inventory shall include stack and fugitive emissions of particulate matter, PM_{10}, $PM_{2.5}$, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur (TRS), ammonia, sulfuric acid mist, hydrogen sulfide, reduced sulfur compounds, fluorides, lead, VOCs, and toxic air pollutants identified in WAC 173-460. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards.

(a) Small "sources." Emission reports shall be submitted to the Agency no later than March 15 of each year for the previous calendar year. Upon written request, the Executive Director may allow an extension of the March 15 emission submittal deadline on a case-by-case basis. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(b) Large "sources." At a minimum, "sources" satisfying the criteria of 40 CFR 51, Subpart ((~~Q~~)) A will be submitted to EPA by the Agency for inclusion in the national emission database. Upon request, the "sources" described below shall complete and return the emission inventory form supplied by the Agency for this purpose by March 15. ((~~Upon written request,~~)) An extension of the March 15 emission submittal deadline may be allowed by the Executive Director on a case-by-case basis provided the affected source makes a written request. Extension of the emission submittal deadline shall not exceed a maximum period of 60 calendar days.

(i) "Stationary sources" with the potential to emit over 100 tons of criteria pollutants per year, 10 tons of a single hazardous air pollutant per year or 25 tons of combined hazardous air pollutants per year are required to submit an emissions inventory. Only the hazardous air pollutants listed in Section 112 of the FCAA are considered for the purpose of determining those "stationary sources" required to submit an emissions inventory under this section.

(ii) In ozone nonattainment or maintenance plan areas, those "stationary sources" with the potential to emit over 10.0 tons of VOCs per year or over 25.0 tons per year of NO_X are also required to submit emission inventories. "Stationary sources" subject to this section are also required to submit average daily emissions or process throughput data for NO_X and VOCs for ozone season in preparation for the SIP update.

(iii) "Stationary sources" with the potential to emit greater than 50 percent of the Title V permit thresholds as identified in (i) above.

(iv) "Synthetic minor" or Title V opt out "stationary sources."

(c) Greenhouse gases. The Agency may require that "sources" submit an inventory of greenhouse gas emissions. Affected "sources" shall be notified of the inventory requirement and submittal deadline in writing.

(2) **Monitoring.** The Agency shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the Executive Director or an authorized representative may require any "source" under the jurisdiction of the Agency to conduct stack and/or ambient air monitoring and to report the results to the Agency.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from the Agency shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing one or two families.

(4) **Continuous monitoring and recording.** Owners and operators of the following "source categories" shall

install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators:

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million Btu per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million Btu per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to the Agency by the owner(s) or operator(s).

(b) Sulfuric acid plants. Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluidized bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators:

(i) Opacity, except where steam generator capacity is less than one hundred million Btu per hour heat input.

(ii) Continuous monitoring equipment. The requirements of SWCAA 400-105 (4)(e) do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by SWCAA 400-105 (4)(d) shall be subject to approval by the Agency.

(e) Owners and operators of those "sources" required to install continuous monitoring equipment under this section shall demonstrate to the Agency, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (as in effect on ((~~January 1, 2009~~)) July 1, 2015), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, the Agency determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures shall be established on an individual basis. Alternative monitoring and reporting procedures may include continuous monitoring of process/operational parameters as a surrogate to continuous emissions monitoring and/or stack tests conducted at a frequency sufficient to determine compliance with applicable regulations and permit requirements as well as to quantify emissions.

(g) Exemptions. This subsection (SWCAA 400-105(4)) does not apply to any "stationary source" pollutant emission that is:

(i) ((~~Subject to a New Source Performance Standard (NSPS). NSPS "stationary sources" shall be governed by SWCAA 400-115.~~)) Required to be continuously monitored due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63 or 75.

(ii) Not subject to an applicable emission standard.

(((~~(h) Monitoring system malfunctions. A "source" may be temporarily exempted from the monitoring and reporting requirements of this section during periods of monitoring system malfunctions provided that the owner(s) or operator(s) shows to the satisfaction of the Agency that the malfunction was unavoidable and is being repaired as expeditiously as practicable as provided under SWCAA 400-107.~~))

(5) **((~~Change in raw materials or fuels for sources not subject to requirements of the Operating Permit Program.~~** ~~Any change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by SWCAA 400-105(1) shall require the submittal of sufficient information to the Agency to determine the effect of the increase upon ambient concentrations of sulfur dioxide. The Agency may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.~~

(~~6~~))) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(((~~7~~))) (6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

(7) **Requirements for Continuous Emission Monitoring Systems.** The Agency may require any continuous emission monitoring system (CEMS) installed pursuant to an air discharge permit, PSD permit, or agency regulation, and not subject to CEMS requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75, to meet the following requirements:

(a) Quality Assurance. The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on July 1, 2015, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(b) Data Availability. Except for system breakdowns, repairs, calibration checks, and zero and span adjustments, continuous monitoring systems shall be in operation whenever the associated generating equipment is in operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(c) Data Recovery. The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the associated generating equipment is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(d) Data Recording. Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval, permit, or regulation. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no valid data is collected until the monitoring system passes a quality assurance test or audit.

(e) Data Retention. The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) Data Reporting. The owner or operator shall submit a report to SWCAA within thirty days after the end of each month in which data were recorded or as otherwise directed by the terms of the applicable air discharge permit, PSD permit, or regulation. The report required by this section may be combined with an excess emission report required by SWCAA 400-107. The report shall include the following information:

(i) The number of hours that the monitored emission unit operated during the month and the number of valid hours of monitoring data that the monitoring system recovered during the month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of section (c) above and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the associated generating equipment was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources

(1) **Emission testing requirements.**

(a) **Requirement to test.** The Agency may conduct or require that emission testing be conducted of any "source" or emission unit within the jurisdiction of the Agency to 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 January 1, ((~~2009~~)) 2015), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to SWCAA 400), Oregon Department of Environmental Quality (DEQ) Method 8 "Sampling Particulate Emissions from Stationary Sources (High Volume Method)" hereby adopted by reference, or alternate procedures approved by both the Agency and EPA.

(c) **Accommodations for sampling.** The operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform a test of an emission unit. The Agency shall be allowed to obtain a sample from any emission unit. The operator of the "source" shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(d) **Notification/test plan submission.** The owner or operator of a "source" shall submit a test plan to the Agency in writing at least 10 business days prior to any required emissions test or as otherwise approved by the Agency. Agency personnel shall be informed at least 3business days prior to testing so that they have an opportunity to be present during testing.

(e) **Test duration.** A minimum of 3 test runs, at least 1 hour in length, shall be performed at maximum achievable operating conditions unless otherwise approved in advance to establish that collected data is representative of normal operations. The results of the individual test runs shall be averaged together for the purpose of demonstrating compliance with applicable emission limits.

(f) **Test records.** A complete record of production related parameters including startups, shutdowns, and adjustments shall be kept during emissions testing to correlate operations with emissions and shall be recorded in the final test report.

(g) **Test reports.** Results of all required emission testing shall be submitted to the Agency within 45 calendar days of test completion or as specified in the applicable air discharge permit. Test reports shall be submitted in both printed and electronic formats. Measured concentrations for combustion and incineration emission units shall be corrected as provided in the applicable air discharge permit or nonroad engine permit, or as specified in SWCAA 400-050(3). The Agency may reject test reports that do not contain the information listed below, and require resubmittal of a complete report. ((~~The~~)) Test reports shall include the following information:

(i) A description of the emission unit including manufacturer, model number and design capacity of the equipment, and the location of the sample ports or test locations;

(ii) Time and date of the test and identification and qualifications of the personnel involved;

(iii) A summary of results, reported in units and averaging periods consistent with the applicable emission standard or limit, or as specified in the applicable air discharge permit.

Where applicable, results shall be reported both as measured and as corrected to the appropriate oxygen correction;

(iv) A summary of control system or equipment operating conditions;

(v) A summary of production related parameters;

(vi) A description of the test methods or procedures used including all field data, quality assurance/quality control procedures and documentation;

(vii) A description of the analytical procedures used including all laboratory data; quality assurance/quality control procedures and documentation;

(viii) Copies of field data and example calculations;

(ix) Chain of custody information;

(x) Calibration documentation;

(xi) Discussion of any abnormalities associated with the results; and

(xii) A statement signed by the senior management official of the testing firm certifying the validity of the emission test report.

(2) **Emission monitoring requirements for combustion sources.**

(a) **Requirement to monitor.** The Agency may require in an air discharge permit or nonroad engine permit that emission monitoring be conducted for any "source" within the jurisdiction of the Agency to evaluate process equipment operation or control equipment performance.

(b) **Monitoring method.** Emission monitoring may be performed with a portable analyzer or EPA reference methods. Alternative methodologies ((~~must be preapproved by~~)) may be used if approved by both EPA and SWCAA.

(i) For any portable analyzer used to perform emission monitoring pursuant to this section, the response of the analyzer to a calibration gas of known concentration shall be determined before sampling commences and after sampling has concluded. These "calibration error" measurements shall be conducted as close as practical to the time of the monitoring event, but in no case on a different day than the event. At a minimum, the calibration error procedure shall include a two point (zero/span gas) calibration error check using EPA Protocol 1 reference gases. Results of the sampling shall not be valid if the pre and post calibration error check results vary by more than 10 percent of the span value; and

(ii) Span gas concentrations shall be no less than 50 percent and no more than 200 percent of the emission concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_X cells/analyzer(s) and span oxygen cells/analyzer.

(c) **Accommodations for sampling.** The owner or operator of a "source" shall provide the necessary platform and sampling ports for Agency personnel or others to perform monitoring of an emission unit.

(d) **Data collection.** Emission data shall be collected for at least five minutes following a "ramp-up" phase. The "ramp-up" phase ends when analyzer readings have stabilized (less than five percent per minute change in emission concentration value). Emission concentrations shall be recorded every 30 seconds during data collection. All 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 shall be kept during emission monitoring to correlate operations with emissions and shall be recorded in the final monitoring report. Typical production parameters include, but are not limited to, startups, shutdowns, unit load, fuel flow, operating temperature, etc.

(f) **Monitoring reports.** Results of all required emission monitoring shall be submitted to the Agency within 15 calendar days of completion or as specified in the applicable regulatory order or air discharge permit. Results shall be submitted on forms provided by the Agency or in an alternative format approved by the Agency. The report shall include the following information:

(i) A description of the emission unit including manufacturer, model number and facility designation;

(ii) Time and date of the emission monitoring;

(iii) Identification of the personnel involved;

(iv) A summary of results, reported in units consistent with the applicable emission standard or limit;

(v) A summary of control system or equipment operating conditions, including firing rate at time of monitoring;

(vi) A description of the evaluation methods or procedures used including all field data, quality assurance/quality control procedures and documentation; and

(vii) Calibration error check documentation.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-107 Excess Emissions

(1) **Excess emission recordkeeping and reporting.** Excess emissions shall be reported to SWCAA as follows:

(a) Excess emissions that represent a potential threat to human health or safety shall be reported as soon as possible, but no later than 12 hours after discovery.

(b) Excess emissions which the owner or operator wishes to be considered as unavoidable, shall be reported to the Agency as soon as possible, but no later than 48 hours after discovery.

(c) All other excess emissions shall be reported within 30 calendar days after the end of the month during which the event is discovered, or for Air Operating Permit sources, as provided in WAC 173-401-615.

(d) Excess emission reports shall contain the following information:

(i) Identification of the emission unit(s) involved;

(ii) A brief description of the event including identification of known causes;

(iii) Date, time and duration of the event; ((~~and~~))

(iv) ((~~Anticipated corrective action to prevent or minimize excess emissions, if any~~)) For exceedances of non-opacity emission limitations, an estimate of the quantity of excess emissions;

(v) Corrective action taken in response to the event; and

(vi) Preventive measures taken or planned to minimize future recurrence.

(e) For any excess emissions the owner or operator wishes to be considered as unavoidable, the excess emission

report must include the following information in addition to that listed in subsection (d) above:

(i) Properly signed, contemporaneous records documenting the owner or operator's actions in response to the excess emissions event;

(ii) Information on whether installed emissions monitoring and pollution control systems were operating at the time of the exceedance. If either or both systems were not operating, information on the cause and duration of the outage; and

(iii) All additional information required by section (2) below supporting the claim that the excess emissions were unavoidable.

((~~Upon request by the Agency, the owner(s) or operator(s) of the "source" shall submit a full written report describing the known causes, the corrective actions taken, and the preventive measures implemented to minimize or eliminate the chance of recurrence.~~))

(2) ((**~~Penalty exclusion for~~**)) **Unavoidable excess emissions.** Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute. Unavoidable excess emissions are subject to injunctive relief but not penalty. The decision that excess emissions are unavoidable is made by the permitting authority. In a federal enforcement action filed under 42 USC 7413 or 7604 the decision-making authority shall determine what weight, if any, to assign to the permitting authority's determination that an excess emissions event does or does not qualify as unavoidable under the criteria in subsections (c), (d), and (e) below.

(a) **Burden of proof.** The owner or operator of a "source" shall have the burden of proving to the Agency or ((~~the Pollution Control Hearings Board~~)) decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under this section.

(b) ((~~Excess emissions determined by the Agency to be unavoidable under the procedures and criteria in this section shall be excused from penalty.~~)) **Applicability.** This section does not apply to excess emissions that:

(i) Cause a monitored exceedance of any relevant ambient air quality standard;

(ii) Exceed emission standards promulgated under 40 CFR Parts 60, 61, 62, 63, 72, or a permitting authority's adoption by reference of such federal standards; and

(iii) Exceed emission limits and standards contained in a PSD permit issued solely by EPA.

(c) **Startup or shutdown.** Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the "source" reports as required under ((~~sub~~))section (1) ((~~of this section~~)) and adequately demonstrates that ((~~the~~)):

(i) Excess emissions could not have been prevented through careful planning and design((~~,~~));

(ii) Startup or shutdown was done as expeditiously as practicable;

(iii) All emission monitoring systems were kept in operation unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(iv) The emissions were minimized consistent with safety and good air pollution control practice during the startup or shutdown period;

(v) ((~~and~~)) If a bypass of control equipment occurs, that such bypass ((~~is~~)) was necessary to prevent loss of life, personal injury, or severe property damage; and

(vi) Excess emissions that occur due to upsets or malfunctions during routine startup or shutdown are treated as upsets or malfunctions under section (e) below.

(d) **Maintenance.** Excess emissions due to scheduled maintenance shall be considered unavoidable if the "source" reports as required under ((~~sub~~))section (1) ((~~of this section~~)) and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.

(e) **Upsets or malfunctions.** Excess emissions due to upsets or equipment malfunctions shall be considered unavoidable provided the "source" reports as required under ((~~sub~~))section (1) ((~~of this section~~)) and adequately demonstrates that:

(i) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(ii) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iii) The operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded; ((~~and~~))

(iv) ((~~The owner's or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.~~)) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage; and

(v) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-109 Air Discharge Permit Applications

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

(2) **Applicability.**

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consis-

tent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

(i) New construction or installation;

(ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);

(iii) Review of existing or installed equipment operating without prior approval;

(iv) Modification, alteration or replacement of existing process or control equipment;

(v) Relocation of existing equipment;

(vi) Review of existing equipment with an expired or lapsed approval or registration;

(vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT BART, LAER).

(b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.

(c) ((")) Stationary sources ((")) subject to the PSD program (WAC 173-400-700 through -750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, shall include all information necessary to meet the requirements of SWCAA 400-800 through -860.

(e) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected emission units and quantify potential emissions, and the payment of a fee equal to $300. This fee provides for up to 4 hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate of $70/hr. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

Name and location of "stationary source";

Description of primary processes at the "stationary source";

Description of emission units at the "stationary source"; and

Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application shall be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and ((~~proper notification has been submitted to~~)) SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or emission unit may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas in any new air discharge permit.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all emission units at the affected site or facility are less than all of the following exemption emission thresholds.

Pollutant	*Exemption Threshold*
((~~Criteria pollutants (other than $PM_{2.5}$~~)))	
NO_X, CO, SO_2	1.0 tpy (individual pollutant)
PM_{10}	0.75 tpy
$PM_{2.5}$	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	The lesser of 1.0 tpy (combined) or ((~~below~~)) the individual SQER per ((~~Chapter~~)) WAC 173-460 ((~~WAC, whichever is less.~~)) (effective 8/21/98)

((~~(c)~~)) (e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

(A) Relocation of a portable ((~~equipment~~)) source that has an active air discharge permit from SWCAA allowing portable operation,

(B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Emergency service internal combustion engines ((~~manufactured after January 1, 2008 and individually rated at less than 200 horsepower. This exemption does not apply if the~~)) located at a facility where the aggregate power rating of all internal combustion engines ((~~at the affected facility is greater than 500~~)) is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered,

(E) Asphalt roofing and application equipment (not manufacturing or storage equipment),

(F) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

(G) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

(H) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,

(I) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

(J) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

(K) Retail paint sales establishments (not including manufacturing),

(L) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

(M) Sewing equipment,

(N) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

(O) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(c). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

(P) Residential wood heaters (e.g., fireplaces and woodstoves),

(Q) Office equipment, operations and supplies,

(R) Steam cleaning equipment used exclusively for that purpose,

(S) Refrigeration systems that are not in air pollution control service,

(T) Housekeeping activities and equipment,

(U) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

(V) Natural and forced air vents and stacks for bathroom/toilet facilities,

(W) Personal care activities,

(X) Lawn and landscaping activities,

(Y) Flares used to indicate danger to the public,

(Z) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425, ((~~and~~))

(AA) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question, and

(AB) Emergency service internal combustion engines individually rated at less than 50 horsepower.

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant shall submit all applicable fees as detailed in the following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee/Table A + Additional Review Fee/Table B (if applicable) + Major NSR Review Fee/Table C (if applicable)]

Filing Fee

A filing fee of $500.00 shall be submitted for each permit application.

Legal Notice Fee

An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal Notice pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus $70 to compensate for the staff time required to prepare, mail and invoice the public notice.

Permit Application Review Fee

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will

be invoiced for each additional work hour at the rate of $70.00 per hour.

Expedited Application Review

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent on the accuracy/completeness of the application and the responsiveness of the applicant.

Additional/Major NSR Review Fees

If additional ((~~types of review~~)) actions, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay ((~~an~~)) additional ((~~review~~)) fees as specified in those Tables. The ((~~review~~)) fees identified in Tables B and C are cumulative. If the staff time required to complete the additional review exceeds the number of work hours associated with the applicable review fee specified in Tables B and C, the applicant will be invoiced for each additional work hour at the rate of $70.00 per hour.

TABLE A
Permit Application Review Fees

	Equipment/Activity	Associated Work Hours	Review Fee
i.	Fuel burning equipment (Million Btu/hr heat input @ design capacity):		
	0.4 or more but less than 5	8	$ 600.00
	5 or more but less than 10	10	700.00
	10 or more but less than 30	12	850.00
	30 or more but less than 50	14	1,000.00
	50 or more but less than 100	17	1,200.00
	100 or more but less than 250	35	2,500.00
	250 or more but less than 500	57	4,000.00
	500 or more	85	6,000.00
	Change in fuel type	One half of the applicable fee listed above	
ii.	Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute - ACFM):		
	Less than 50	8	$ 600.00
	50 or more but less than 5,000	10	700.00
	5,000 or more but less than 20,000	11	800.00
	20,000 or more but less than 50,000	12	900.00
	50,000 or more but less than 100,000	13	950.00
	100,000 or more but less than 250,000	14	1,000.00
	250,000 or more but less than 500,000	28	2,000.00
	500,000 or more	57	4,000.00
iii.	Refuse burning equipment (Incinerators) (Tons/day capacity):		
	Less than 0.5	10	$ 700.00
	0.5 or more but less than 5	11	800.00
	5 or more but less than 12	14	1,000.00
	12 or more but less than 50	42	3,000.00
	50 or more	85	6,000.00
iv.	Storage tanks, reservoirs, or containers (Gallons-total capacity): (Other than gasoline or diesel fuel dispensing facilities):		
	250 or more but less than 10,000	8	$ 600.00
	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

	Equipment/Activity	Associated Work Hours	Review Fee
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:	$200.00 per ton of emission	
	(Not classified in Subsection i., ii., iii., iv. or v. above)		
vii.	Toxic air contaminants	$200.00 per ton of emission	
viii.	Complex stationary source or modification:	85	$ 6,000.00
ix.	Synthetic minor application:	35	$ 2,500.00
	(Including, but not limited to: Title V, HAP)		
x.	Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions - tons per year):		
	Less than or equal to 10	8	$ 600.00
	More than 10 but less than or equal to 50	14	1,000.00
	More than 50 but less than or equal to 100	21	1,500.00
	More than 100 but less than 250	35	2,500.00
	250 or greater	85	6,000.00
xi.	Minor modifications to existing permit conditions:	8	$ 600.00
xii.	Dry cleaner:	8	$ 600.00
xiii.	Internal combustion engines (Aggregate horsepower rating):		
	Less than 500	10	700.00
	500 or more but less than 2,000	14	1,000.00
	2,000 or more but less than 5,000	21	1,500.00
	5,000 or more but less than 10,000	42	3,000.00
	10,000 or more	85	6,000.00
xiv.	Crematory/small incinerators/small flares:	10	$ 700.00
xv.	Gluing/flow coating operations without active ventilation:		
		11	$ 800.00
xvi.	Soil/groundwater remediation:	11	$ 800.00
xvii.	Composting facilities (Average material throughput - tons per day):		
	Less than 50	8	$ 600.00
	50 or more but less than 100	14	1,000.00
	100 or more but less than 200	21	1,500.00
	200 or more but less than 500	42	3,000.00
	500 or more	85	6,000.00
xviii.	Coffee roasters:	10	$ 700.00
xix.	Municipal wastewater treatment plants: (Million gallons per day - annual average design capacity)		
	More than 1 but less than 5	11	$ 800.00
	5 or more but less than 10	21	1,500.00
	10 or more	35	2,500.00

TABLE B
Additional ((~~Review~~)) Fees

	Equipment/Activity	Associated Work Hours	((~~Review~~)) Fee
xx.	Emission offset analysis or bubble:	10	$ 700.00
xxi.	Emission reduction credit (ERC) application:	10	$ 700.00
(Deposit or withdrawal)			
xxii.	((~~State environmental policy act (SEPA) lead agency:~~		
	~~Minor~~	~~14~~	~~$ 1,000.00~~
	~~Major~~	~~35~~	~~2,500.00~~
~~xxiii.~~	~~Environmental impact statement (EIS) review:~~		
	~~Minor~~	~~11~~	~~$ 800.00~~
	~~Major~~	~~28~~	~~2,000.00~~
~~xxiv.~~))	RACT/BACT/MACT/BART/LAER determination:		$ 70.00/hr
((~~xxv.~~)) (xxiii.)	Variance request:	11	$ 800.00
((~~xxvi.~~)) (xxiv)	Review of ambient impact analysis:		$ 70.00/hr
((~~xxvii.~~)) (xxv.)	Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		$ 70.00/hr

TABLE C
Major NSR ((~~Review~~)) Fees

Equipment/Activity	Associated Work Hours	((~~Review~~)) Fee
((~~xxviii.~~)) (xxvi.) Plantwide applicability limitations:	142	$ 10,000.00

(5) **((~~Agency actions~~)) Final determination.**

(a) Each complete air discharge permit application shall result in the issuance of ((~~an air discharge permit or other applicable order~~)) a final determination consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. ((~~Demonstration of completion of an~~)) Air discharge permit applications for actions that are subject to SEPA review shall include a completed environmental checklist as provided in WAC 197-11 ((~~shall be submitted with each air discharge permit application. If a SEPA determination has been issued for the proposed activity by another permitting agency, the applicant need only submit~~)) or a copy of ((~~that~~)) another agency's SEPA determination for the same action. ((~~Issuance of air discharge permits or regulatory orders for all air discharge permit applications shall be consistent with the requirements of SWCAA 400-110.~~)) A list of actions exempt from SEPA is found in WAC 197-11-800.

(6) **Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review)

(1) **Applicability.**

(a) Air discharge permit applications submitted to the Agency pursuant to SWCAA 400-109 shall be reviewed and approved in accordance with the requirements of this section.

(b) Review of a modification shall be limited to the emission unit(s) proposed to be added to an existing "stationary source" or modified and the air contaminants whose emissions would increase as a result of the modification except that review of a "major modification" shall comply with the requirements of SWCAA 400-111, 400-112, 400-113, 400-

800 through -860, and/or WAC 173-400-((720)) 700 through -750.

(c) The requirements of this section are not applicable to:

(i) "Stationary sources" that meet the exemption criteria specified in SWCAA 400-109(3). The owner or operator of an exempt facility shall maintain sufficient documentation acceptable to the Agency to substantiate that the "stationary source" is entitled to exemption under this section; ((and))

(ii) Nonroad engines subject to the requirements of SWCAA 400-045 and 400-046; and

(iii) Portable stationary sources subject to the provisions of SWCAA 400-036.

(d) Review is not required for the following:

(i) A process change that does not result in the emission of a type of toxic air pollutant, as provided in Chapter 173-460 WAC (as in effect 8/21/98), not previously approved and individual toxic air pollutant emissions do not exceed the Small Quantity Emission Rates specified in WAC 173-460-150. The process change may not cause an existing emission limit to be exceeded; or

(ii) A raw material composition change that does not result in individual toxic air pollutant emissions that exceed the applicable Small Quantity Emission Rate specified in WAC 173-460-150. The material change may not cause an existing emission limit to be exceeded.

(2) **Application completeness determination.** Within 30 calendar days of receipt of an air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application as provided under RCW 70.94.152.

(a) Each application shall provide information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification. The application shall identify the location, design, construction, and operation the new source as necessary to enable the Agency to determine that the new source will meet applicable requirements.

(b) An application for a new major stationary source or major modification shall provide all information required for review pursuant to WAC 173-400-700 through -750 or SWCAA 400-800 through -860, as applicable.

(c) An application for a source subject to the Special Protection requirements for federal Class I areas in WAC 173-400-117(2) shall include all information required for review of the project under WAC 173-400-117(3).

(d) A completed SEPA checklist or relevant SEPA determination for the proposed action shall be submitted with each application, as provided in WAC 197-11. If a proposed action is exempt from SEPA, sufficient documentation shall be provided to confirm its exempt status.

(3) **Requirements.**

(a) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any "new source," new emission unit, or modification.

(b) ((Regardless of any other provision of this section or 400-109,)) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any ((of the following:

(i) Any project that qualifies as a new major stationary source, or a major modification; or

(ii) Any)) modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS and applicable ambient air quality standards (((See Table A below). A completed SEPA checklist or determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.)) Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. If the ambient impact of a proposed project could potentially exceed an applicable ambient air increment, the Agency may require that the applicant demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on ((January 1, 2009)) July 1, 2015). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

((**TABLE A – Emission Concentration Regulatory Standards**

Pollutant	Averaging Period	Ambient Air Increment *40 CFR 51.166(c)* Class I µg/m³	Ambient Air Increment *40 CFR 51.166(c)* Class II µg/m³	National Ambient Air Quality Standards (NAAQS) *40 CFR 50* Primary Standard µg/m³ (ppm)	National Ambient Air Quality Standards (NAAQS) *40 CFR 50* Secondary Standard µg/m³ (ppm)	State Ambient Air Quality Standards *173-170, 174, and 175 WAC* Ambient Standard µg/m³ (ppm)
Carbon Monoxide (CO)	8-Hour	-	-	10,000[b] (9.0)	-	10,000[b] (9.0)
	1-Hour	-	-	40,000[b] (35.0)	-	40,000[b] (35.0)
Nitrogen Dioxide (NO_2)	Annual[a] (arithmetic mean)	2.5	25	100 (0.05)	100 (0.05)	100 (0.05)
Ozone (O_3)	1-Hour[e]	-	-	(0.12)	(0.12)	(0.12)
	8-Hour[f]	-	-	(0.075)	(0.075)	-

Pollutant	Averaging Period	Ambient Air Increment 40 CFR 51.166(c) Class I µg/m³	Ambient Air Increment 40 CFR 51.166(c) Class II µg/m³	National Ambient Air Quality Standards (NAAQS) 40 CFR 50 Primary Standard µg/m³ (ppm)	National Ambient Air Quality Standards (NAAQS) 40 CFR 50 Secondary Standard µg/m³ (ppm)	State Ambient Air Quality Standards 173-170, 174, and 175 WAC Ambient Standard µg/m³ (ppm)
Sulfur Dioxide (SO_2)	Annual[a] 24-Hour 3-Hour 1-Hour	2 5 25 -	20 91 512 -	80 (0.03) 365[b] (0.14) -	- - 1,300[b] (0.50) -	53 (0.02) 260[b] (0.10) - 1,065[b] (0.40)
Lead	Quarterly Average	-	-	1.5	1.5	1.5
Particulate Matter less than 10 µm (PM_{10})	Annual (arithmetic mean) 24-Hour[i]	4 8	17 30	150[b]	150[b]	50 150[b]
Particulate Matter less than 2.5 µm ($PM_{2.5}$)	Annual[g] (arithmetic mean) 24-Hour[h]	-	-	15 35	15 35	-

µg/m3 = micrograms per cubic meter; ppm = parts per million
a Never to be exceeded.
b Not to be exceeded more than once per year.
c This is not a standard, rather it is to be used as a guide in assessing whether implementation plans will achieve the 24-hour standard.
d Also, 0.25 ppm not to be exceeded more than twice in seven days.
e Not to be exceeded on more than 1 day per calendar year as provided in ((WAC)) Chapter 173-475 WAC.
f Based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration at each monitor.
g Based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations.
h Based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each monitor within an area.
i Based on the 99th percentile of 24-hour PM_{10} 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" that meet the applicability criteria of WAC 173-400-720 shall demonstrate that all applicable requirements of ((SWCAA 400-141 and)) WAC 173-400-700 through 750 have been met.

(e) Air discharge permit applications for "major stationary sources" or "major modifications" that are located within a designated nonattainment area and meet the applicability criteria of SWCAA 400-820 shall demonstrate that all applicable requirements of SWCAA 400-800 through -860 have been met.

(f) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager and EPA.

(((3) **Application completeness determination.** Within 30 calendar days of receipt of an air discharge permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application as provided under RCW 70.94.152.

(a) For an application subject to PSD review under WAC 173-400-700, a completeness determination includes a determination that the application provides all information required to conduct PSD review.

(b) For an application subject to Special Protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).))

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete application, the Agency shall either issue a final decision ((on)) approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. The Agency will promptly mail copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

An owner or operator seeking to construct or modify a "stationary source" that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the application required by this section. An application designated for integrated review shall be processed in accordance with Chapter 173-401 WAC procedures and deadlines and must comply with SWCAA 400-171. A PSD permit application ((under)) subject to WAC 173-400-700 through -750 shall comply with the public process requirements of those sections. ((or an air discharge permit application for a "major modification" or a "major stationary source" in a nonattain-

~~ment area must also comply with SWCAA 400-171 and WAC 173-400-171, as applicable~~)).

(b) An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(((~~(b)~~))) (c) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

(((~~(c)~~))) (d) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(((~~(d)~~))) (e) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" as those terms are defined in SWCAA 400-810, the Agency shall submit any control technology determination(s) included in a final air discharge permit to the RACT/BACT/LAER clearinghouse maintained by EPA and submit a copy of the final permit to EPA.

(f) If SWCAA is the lead SEPA agency for the proposed action and mitigation measures are required as a result of the SEPA review, applicable mitigation measures shall be included in the final determination.

(5) **Appeals.** An air discharge permit, any conditions contained in an air discharge permit, the denial of an air discharge permit application, or any other regulatory order issued by the Agency, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. ((~~The Agency shall promptly mail copies of each order approving or denying an air discharge permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.~~))

(6) **Portable ((~~equipment~~)) sources.** The owner(s) or operator(s) of ((~~"portable equipment,"~~)) portable sources, as defined in SWCAA 400-030, shall be allowed to operate at temporary locations without filing an air discharge permit application for each location provided that:

(a) The affected emission units are registered with the Agency pursuant to SWCAA 400-100.

(b) The affected emission units have an air discharge permit as a portable "stationary source" issued by SWCAA.

(c) The owner(s) or operator(s) notifies the Agency of intent to operate at the new location ((~~at least 10 business days~~)) prior to starting the operation. This rule section supersedes corresponding notification requirements contained in existing air discharge permits.

(d) The owner(s) or operator(s) supplies sufficient information including production quantities and hours of operation, to enable the Agency to determine that the operation will comply with applicable emission standards, and will not cause a violation of applicable ambient air quality standards and, if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(((~~(c) Landowners and residents of immediately adjacent properties are notified by the owner(s) or operator(s) of the "portable equipment" in writing at least 10 business days prior to commencement of operations at the proposed location. Copies of the notification letters shall be mailed to the Agency. Written notification to the adjacent landowners and residents shall be by certified mail with return receipt requested. Such written notification shall include a complete description of the proposed operation, the associated emissions control provisions and equipment, the total estimated project emissions, the name, address and phone number of the person in charge of the operation, and the address and phone number for SWCAA. Written notification shall indicate that all comments shall be directed to the Agency.~~))

((~~"Portable equipment"~~)) A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be ((~~considered to be permanently shutdown and will be~~)) removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any ((~~"portable equipment"~~)) portable source removed from active registration shall ((~~be required to~~)) submit a new permit application pursuant to SWCAA 400-109 and undergo review as a "new source" prior to operating again within the jurisdiction of the Agency.

(7) **Compliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order or an air discharge permit issued pursuant to this section shall be considered a violation of this section. Noncompliance with any term of a regulatory order or air discharge permit used to satisfy the criteria of SWCAA 400-036 shall be considered a violation of this section.

(8) **Expiration.** Approval to construct or modify a "stationary source" shall become invalid if construction is not commenced within eighteen months after the date of issuance of an air discharge permit, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date. On a permit specific basis, the Agency may specify an earlier date for commencement of construction in an air discharge permit.

The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. To obtain an extension the permittee must submit a written request to the Agency at least 60 calendar days prior to permit expiration. The request shall clearly identify the justification for an extension and include relevant supporting information. The Agency will review all submitted information, and then approve or deny the request in writing. If the original permit action required a public comment period pursuant to SWCAA 400-171, the Agency shall provide an additional public comment period prior to approving an extension. An extension for a PSD permit must be approved by Ecology((~~, and comply with the public notice requirements in WAC 173-400-171~~)). The extension of a project that is either a major stationary source or a major modification, as those terms are defined in SWCAA 400-810, shall also require determination of LAER as it exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

The Agency may revoke a source's Order of Approval or air discharge permit if applicable registration fees are delinquent for 2 or more consecutive years.

(9) **Change of conditions.**

(a) The owner or operator may request, at any time, a change in existing approval/permit conditions. The Agency may approve the request provided that:

(i) The change will not cause an applicable emissions ((~~limit or~~)) standard set by regulation or rule to be exceeded;

(ii) No ambient air quality standard or ambient air increment will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the Agency to determine compliance with an emissions standard;

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112, ((~~and~~)) 400-113, and 400-830(3) as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

(c) Actions taken under this subsection are subject to the public involvement provisions of SWCAA 400-171 as applicable.

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, shall be considered when determining which new source review approvals are required.

(e) A request to change approval/permit conditions shall be filed as an air discharge permit application in accordance with SWCAA 400-109. The application shall meet the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The fee schedule found in SWCAA 400-109((~~(3)~~))(4) shall apply to these requests.

(10) **Reopening for cause.** The Agency may, on its own initiative, reopen any order or permit issued pursuant to this section under the following circumstances:

(a) The order or permit contains a material mistake. Typographical errors are presumed to constitute a material mistake.

(b) Inaccurate statements were made in establishing the emission standards and/or conditions of the order or permit.

(c) The permit does not meet minimum federal standards.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area

For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in ((~~SWCAA 400-030, subsections (60)(a), (61)(a), (71)(a) and (107)(a) respectively~~)) WAC 173-400-710.

((~~An air discharge permit application to establish a "new source", install or replace an "emission unit" or make a modification to a "stationary source" in an area that is covered by a maintenance plan, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section.~~)) "New sources"((~~, new "emission units"~~)) or modifications within a designated maintenance plan area, including "stationary sources" that emit VOC or NO_X in a designated ozone maintenance plan area, shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification shall:

(a) Comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for Source Categories, emission standards adopted under Chapter 70.94 RCW, and the applicable emission standards of the Agency; and

(b) Not cause any ambient air quality standard as provided in SWCAA 400-113(3) to be violated; and

(c) Not violate the requirements for reasonable further progress established by the Washington State Implementation Plan; and

(d) Minimize emissions to the extent that the "new source" or modification will not delay the attainment date for a nonattainment area, exceed emission levels or other requirements provided in a maintenance plan for an area that was previously identified as a nonattainment area, nor cause or contribute to a violation of any ambient air quality standard.

(2) **Control Technology Requirements - BACT/ LAER.** Except as provided below, the owner or operator of the proposed "new source", "emission unit" or modification shall apply BACT for each pollutant. In the case of a modification, the requirement for BACT shall apply to each new or modified emission unit which increases emissions. For phased construction projects, the determination of BACT shall be reviewed at the latest reasonable time prior to commencement of construction of each independent phase. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may require the application of LAER for the maintenance pollutant(s) and any pollutant for which the proposed "new source" or modification is major.

(3) **Source compliance.** The owner or operator of the proposed "new source", "emission unit" or modification shall certify that all "stationary sources" owned or operated by such person (or by an entity controlling, controlled by, or under common control with such person) in Washington are in compliance or on a schedule for compliance, with all applicable emission limitations and standards under the Washington Clean Air Act Chapter 70.94 RCW((~~.~~)).

(4) **Alternative analysis.**

(a) Except as provided in subsection (c) of this section, the owner or operator of a proposed "major stationary source" or "major modification" shall conduct an alternatives analysis;

(b) This analysis shall include an evaluation of alternative sites, sizes, production processes, and environmental control techniques for such proposed "stationary source" or modification that demonstrates that benefits of the proposed "stationary source" or modification significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification;

(c) This analysis shall not be required for a "major stationary source" or "major modification" that is subject to this rule due to emissions of particulate matter in a designated TSP maintenance area.

(5) **Emission offsets and industrial growth allowances.** The owner or operator of a proposed new "major stationary source" or "major modification" shall provide emission offsets that satisfy the requirements of this section. Except as provided in subsection (a) of this section, the offset requirements of this section may be met in whole, or in part, by an allocation from an industrial growth allowance, if available. Industrial growth allowances for "stationary sources" in a maintenance plan area are identified in and governed by the Washington SIP and the maintenance plan for the applicable maintenance plan area. All growth allowance allocations for the maintenance plan areas within the Agency's jurisdiction shall be made in accordance with this section.

(a) Available growth allowances may be increased or decreased as provided in a revision to the maintenance plan submitted to and approved by EPA. If a violation of an ozone ambient air quality standard or a second violation of the CO ambient air quality standard has occurred, the Agency may suspend the use of growth allowances, and require the proposed new "major stationary source" or "major modification" to provide offsets as described in subsection (c) below.

(b) The owner or operator of a proposed new "major stationary source" or "major modification" emitting VOCs, NO_X, or CO may obtain a portion of any remaining emissions in the respective growth allowance in accordance with the following process:

(i) Access is on a first-come-first-served basis, based on the date of a complete application and allowance allocation request;

(ii) Growth allowances shall be used to satisfy offset requirements at a ratio of 1 to 1 for new VOC and/or NO_X emissions.

(iii) No single "stationary source" may receive an emissions allocation of more than 50 percent of the available growth allowance, or up to 10.0 tons per year, whichever is greater. On a case-by-case basis, the SWCAA Board of Directors may approve an emissions allocation of greater than 50 percent upon consideration of the following:

(A) Information submitted by the "stationary source" to SWCAA justifying its request for exceeding the 50 percent emissions allocation, based on significant economic, employment, or other benefits to the maintenance plan area that will result from the proposed new "major stationary source" or "major modification";

(B) Information provided by SWCAA on other known new "major stationary sources" or "major modifications" seeking an emissions allocation from the same growth allowance; and

(C) Other relevant information submitted by the "stationary source" or SWCAA.

(iv) To avoid jeopardizing maintenance of the ozone standard during the interim years of the ozone maintenance plan, SWCAA may limit the quantity of VOC and NO_X growth allowances made available each year. SWCAA will track use of VOC and NO_X allocations from the growth allowances.

(v) The amount of the CO growth allowance that can be allocated is identified in the applicable CO maintenance plan, if any.

(c) If no emissions remain in the respective growth allowance, or the Agency has suspended the use of growth allowances, the owner or operator of the proposed "major stationary source" or "major modification" shall provide offsets.

(i) A demonstration shall be provided showing that the proposed offsets will improve air quality in the same geographical area affected by the "new source" or modification. This demonstration may require that air quality modeling be conducted according to the procedures specified in 40 CFR Part 51, Appendix W, Guideline on Air Quality Models (Revised).

(ii) Offsets for VOCs or nitrogen oxides shall be within the same maintenance plan area as the proposed "stationary source." Offsets for particulate matter, PM_{10}, sulfur dioxide, carbon monoxide, nitrogen dioxide, lead, and other pollutants may be from inside or outside of the same maintenance plan area.

(iii) "New sources" or modifications shall meet the following offset requirements:

(A) Within a designated maintenance plan area, the offsets shall provide reductions that are equivalent or greater than the proposed increases. The offsets shall be appropriate in terms of short term, seasonal, and yearly time periods to mitigate the impacts of the proposed emissions;

(B) Outside a designated maintenance plan area, owners or operators of "new sources" or modifications which have a significant air quality impact on the maintenance plan area as provided in SWCAA 400-113(3) shall provide emission offsets which are sufficient to reduce impacts to levels below the significant air quality impact level within the maintenance plan area; and

(C) The emission reductions must provide for a net air quality benefit.

(I) New "major stationary sources" within an ozone maintenance plan area shall:

(a) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.

(b) Offset the new NO_X emissions at a ratio of 1.1 to 1, if the NO_X emissions exceed either 100 tons per year or 700 pounds per day.

(II) "Stationary sources" within an ozone maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(b) Offset the entire NO_X emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.

(III) New "major stationary sources" within a carbon monoxide maintenance plan area shall:

(a) Offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.

(IV) "Stationary sources" within a carbon monoxide maintenance plan area undergoing "major modifications" shall:

(a) Offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.

(iv) Emission reductions shall be of the same type of pollutant as the emissions from the "new source" or modification. Sources of PM_{10} shall be offset with particulate in the same size range.

(v) Emission reductions shall be contemporaneous, that is, the reductions shall take effect prior to the time of startup but not more than two years prior to the submittal of a complete application for the "new source" or modification. This time limitation may be extended through banking, as provided in SWCAA 400-130, 400-131 and 400-136 for banking activities approved after the effective date of this regulation. In the case of replacement facilities, SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that emissions do not exceed the new emission limits.

(vi) Offsets for new "major stationary sources" or "major modifications" in a maintenance plan area shall meet the following requirements:

(A) The proposed new level of allowable emissions of the "stationary source" or emission unit providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit. No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission unit providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits cannot be credited.

(B) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the new or modified "stationary source" commences operation. The "new source" may not commence operation before the date such reductions are actually achieved. SWCAA may allow simultaneous operation of the old and new facilities during the startup period of the new facility provided that the facilitywide emissions do not exceed the new emission limit.

((~~(9)~~)) (6) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" for the purposes of the PSD program as described in WAC 173-400-700 through 173-400-750, the "new source" or modification shall meet the requirements of that program for all pollutants. For maintenance plan pollutants, the "new source" shall meet all PSD requirements in addition to the requirements of this section.

((~~(10)~~)) (7) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), the "new source" shall meet all applicable requirements of that regulation.

((~~(11)~~)) (8) **Visibility.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the "new source" shall meet all the visibility protection requirements of WAC 173-400-117.

((~~(12)~~)) (9) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-112 Requirements for New Sources in Nonattainment Areas

((~~For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions found in SWCAA 400-030, subsections (60)(a), (61)(a), (71)(a) and (107)(a) respectively.~~

~~An air discharge permit application to establish a "new source" or make a modification to a "stationary source" in a nonattainment area, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section.~~)) "New sources" or modifications within a designated nonattainment area shall meet the following requirements:

(1) **Emission standards.** The proposed "new source" or modification will comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification will employ BACT for all air contaminants not subject to LAER that the "new source" will emit or for which the modification will cause an emissions increase.((~~, except that~~)) If the "new source" is a "major stationary source" or the proposed modification is a "major modification" it will achieve LAER for the air contaminants for which the area has been designated nonattainment and for which the proposed "new source" is major or for which the existing source is major and the modification is ((~~major~~)) significant.

(3) **Ambient air quality standards.** The proposed "new source" or modification will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the Washington SIP and will comply with SWCAA 400-113(3) for all air con-

taminants for which the area has not been designated nonattainment.

(4) ((~~If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the Agency has determined, based on review of an analysis performed by the "stationary source" of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.~~

~~(5) If the proposed "new source" or the proposed modification is major for the air contaminant for which the area is designated nonattainment, allowable emissions of the air contaminant for which the area has been designated nonattainment from the proposed "new source" or modification shall be offset by reductions in actual emissions of the air contaminant for which the area has been designated nonattainment from existing "stationary sources" in the nonattainment area. Emission offsets must be sufficient to ensure that total allowable emissions from existing major stationary sources in the nonattainment area, new or modified sources which are not major stationary sources, and the proposed new or modified source will be less than total actual emissions from existing sources (before submitting the application) so as to represent (when considered together with the nonattainment provisions of Section 172 of the Federal Clean Air Act) reasonable further progress. All offsetting emission reductions must satisfy the following requirements:~~

~~(a) The proposed new level of allowable emissions of the "stationary source" or emission unit(s) providing the reduction must be less than the current level of actual emissions of that "stationary source" or emission unit(s). No emission reduction can be credited for actual emissions that exceed the current allowable emissions of the "stationary source" or emission unit(s) providing the reduction. Emission reductions imposed by local, state, or federal regulations, regulatory orders or permits required by the Federal Clean Air Act, including the Washington SIP, cannot be credited.~~

~~(b) The emission reductions must provide for a net air quality benefit.~~

~~(i) New "major stationary sources" within a marginal ozone nonattainment area shall:~~

~~(A) Offset the new VOC emissions at a ratio of 1.1 to 1, if the VOC emissions exceed either 100 tons per year or 700 pounds per day.~~

~~(B) Offset the new NO_x emissions at a ratio of 1.1 to 1, if the NO_x emissions exceed either 100 tons per year or 700 pounds per day.~~

~~(ii) "Stationary sources" within a marginal ozone nonattainment area undergoing "major modifications" shall:~~

~~(A) Offset the entire VOC emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.~~

~~(B) Offset the entire NO_x emissions increase at a ratio of 1.1 to 1, if such increase exceeds either 40 tons per year or 290 pounds per day.~~

~~(iii) New "major stationary sources" within a moderate carbon monoxide nonattainment area shall offset the new carbon monoxide emissions at a ratio of 1 to 1, if the carbon monoxide emissions exceed either 100 tons per year or 700 pounds per day.~~

~~(iv) "Stationary sources" within a moderate carbon monoxide nonattainment area undergoing "major modifications" shall offset the entire carbon monoxide emissions increase at a ratio of 1 to 1, if such increase exceeds either 100 tons per year or 700 pounds per day.~~

~~(v) For any other nonattainment area, determinations on whether emission offsets provide a positive net air quality benefit shall be made in accordance with the guidelines contained in 40 CFR Part 51, Appendix S (as in effect on July 1, 2002).~~

~~(c) If the offsets are provided by another "stationary source," the reductions in emissions from that "stationary source" must be federally enforceable by the time the air discharge permit for the new or modified "stationary source" becomes effective. An emission reduction credit issued under SWCAA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.~~

~~(6)~~)) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

(((~~(7) If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification," the owner or operator shall demonstrate that all "major stationary sources" owned or operated by such person (or by any entity controlling, controlled by, or under common control of such person) in Washington are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules contained in the Washington SIP.~~

~~(8)~~)) (5) **Major new source review.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification" ((~~for the purposes of the PSD program described in WAC 173-400-141~~)) as those terms are defined in SWCAA 400-810, it shall meet the requirements of ((~~that program for all air contaminants for which the area has not been designated nonattainment~~)) SWCAA 400-800 through 400-860.

(((~~(9)~~))) (6) **Toxics.** If the proposed "new source" or modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

(((~~(10)~~))) (7) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," ((~~as those terms are defined in SWCAA 400-030 (59)(b) and (60)(b),~~)) it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

SWCAA 400-113 Requirements for New Sources in Attainment or Nonclassifiable Areas

((~~For the purposes of this section, "major modification," "major stationary source," "net emissions increase," and "significant," shall have the same meaning as the definitions~~

~~found in SWCAA 400-030, subsections (60)(b), (61)(b), (71)(b) and (107)(b) respectively.~~

~~An air discharge permit application to establish a "new source", install or replace an "emission unit" or make a modification to a "stationary source"~~)) "New sources" or modifications in an area that is in attainment or unclassifiable ((~~for any air contaminant the proposed "new source" would emit, and that is in attainment or unclassifiable for ozone if the proposed new or modified "stationary source" would emit VOC or NO_x, shall result in the issuance of an air discharge permit or other regulatory order, which contains such conditions as are reasonably necessary to assure the maintenance of compliance with this section. The air discharge permit or other regulatory order shall not be issued until the "new source", "emission unit" or modification meets~~)) shall meet the following requirements:

(1) **Emission standards.** The proposed "new source", "emission unit" or modification shall comply with all applicable New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, emission standards adopted under Chapter 70.94 RCW and the applicable emission standards of the Agency.

(2) **Control technology requirement.** The proposed "new source" or modification shall employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the "new source" or modification.

(3) **Allowable impact levels.** Allowable emissions from the proposed "new source", "emission unit" or modification shall not delay the attainment date for an area not in attainment, nor cause or contribute to a violation of any ambient air quality standard. This requirement will be met if the projected impact of the allowable emissions from the proposed "new source" or the projected impact of the increase in allowable emissions from the proposed modification at any location within a nonattainment or maintenance plan area does not exceed the following impact levels for the pollutant(s) for which the area has been designated nonattainment or maintenance:

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO	-	-	0.5mg/m^3	-	2 mg/m^3
SO_2	1.0 µg/m^3	5 µg/m^3	-	25 µg/m^3	30 µg/m^3
PM_{10}	1.0 µg/m^3	5 µg/m^3	-	-	-
$PM_{2.5}$	0.3 µg/m^3	1.2 µg/m^3	-	-	-
NO_2	1.0 µg/m^3	-	-	-	-

If the projected impact of the proposed "new source" or modification exceeds an applicable value from the table above, the owner or operator shall provide offsetting emission reductions sufficient to reduce the projected impact to below the allowable impact level. For a proposed "new source" or modification with a projected impact within a maintenance area, this offset requirement may be met in whole, or in part, by an allocation from an industrial growth allowance. Emission offsets and growth allowance allocations used to satisfy the requirements of this section shall comply with the provisions of SWCAA ((~~400-111(5)~~)) 400-840.

(4) **PSD applicability.** If the proposed "new source" is a "major stationary source" or the proposed modification is a "major modification", as those terms are defined in WAC 173-400-710, it shall meet all applicable requirements of WAC 173-400-700 through 173-400-750.

(5) **Toxics.** If the proposed "new source" or the proposed modification will emit any toxic air pollutants regulated under Chapter 173-460 WAC (as in effect 8/21/98), it shall meet all applicable requirements of that chapter.

(6) **Visibility.** If the proposed "new source" is a "major stationary source," or the proposed modification is a "major modification," it shall meet the special protection requirements for federal Class I areas found in WAC 173-400-117.

(7) **Noncompliance.** Noncompliance with any emission limit, test requirement, reporting requirement or other requirement identified in a regulatory order issued pursuant to this section shall be considered a violation of this section.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-115 Standards of Performance for New Sources

(1) **Adoption by reference.** The standards of performance for "new sources" presented in 40 CFR Part 60 and appendices as in effect on ((~~January 1, 2009~~)) July 1, 2015 are adopted by reference. The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Control Officer of the Agency. Exceptions to this adoption by reference are listed in subsection (2). A list of adopted standards is provided in SWCAA 400, Appendix C for informational purposes.

Pursuant to RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC) under WAC 463-39-115.

(2) **Exceptions.** The following sections and subparts of 40 CFR 60 are not adopted by reference:

(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 FFFF	Emission guidelines and compliance times for other solid waste incineration units that commenced construction on or before December 9, 2004. (ref. 40 CFR 60.2980 et seq.)
(l)	Subpart JJJJ	Stationary Spark Ignition Internal Combustion Engines (ref. 40 CFR 60.4230 et seq.)
(m)	Subpart MMMM	Emission guidelines and compliance times for existing sewage sludge incineration units (ref. 40 CFR 60.5000 et seq.)
(n)	Subpart TTTT	Greenhouse Gas Emissions for Electric Generating Units (ref. 40 CFR 60.5508 et seq.)
(o)	Subpart UUUU	Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units (ref. 40 CFR 60.5700 et seq.)

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-130 Use of Emission Reduction Credits

(1) **((~~Applicability.~~** ~~The owner(s) of any emission reduction credits (ERCs) shall maintain its ability to use said ERCs through approval and registration with the Agency. An ERC shall be considered an emission unit and subject to registration. If the owner of said ERCs fails to maintain or renew its annual registration 6 months beyond the due date, fails to pay its operating permit fee 6 months beyond the due date or has not applied for emission reduction credits, then said amount of emission reduction credits shall revert back to the Agency. The Agency may keep said credits in a credit bank to be used by the Agency in the best interest of the area or credits may be dissolved by the Agency.~~))

((~~(2)~~)) **Permissible use.** An ERC may be used:

(a) To satisfy the requirements for authorization of a bubble under SWCAA 400-120, ((~~as a part of a determination of "net emissions increase," or~~))

(b) As an offsetting reduction to satisfy the requirements for new source review per SWCAA 400-111, ((~~400-112, or~~)) 400-113(3) or 400-830, or

(c) To demonstrate a creditable contemporaneous emission reduction for determining a net emissions increase as defined in WAC 173-400-710 and SWCAA 400-810 provided the ERC meets the criteria to be a creditable contemporaneous emission reduction.

The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

((~~(3)~~)) (2) **Conditions of use.** An ERC may be used only for the air contaminant(s) for which it was issued and in the area for which it was issued except in the case of 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)~~)) (3) **Procedures to use ERC.**

(a) **Individual use.** When an ERC is used under subsection (2) of this section, an application must be submitted to

the Agency and the Agency must issue a regulatory order for use of the ERC(s).

(b) **Sale or transfer of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. An application for the sale or transfer must be submitted by the original ERC owner to the Agency. After receiving an application, the Agency shall reissue a regulatory order to the new owner. The Agency shall update the ERC bank to reflect the availability or ownership of ERCs. No discounting shall happen as part of this type of transaction.

((~~(5)~~)) (4) **Expiration of ERC.** An unused ERC and any unused portion thereof shall expire ((~~five~~)) ten years after the date the emission reduction was accomplished and not the date of the regulatory order.

((~~(6)~~)) (5) **Maintenance of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-131 Deposit of Emission Reduction Credits Into Bank

(1) **Applicability.** The owner(s) or operator(s) of any "stationary source" may apply to the Agency for an emission reduction credit (ERC) if the "stationary source" proposes to reduce its actual emission rate for any contaminant regulated by state or federal law or regulations established to implement such law(s) for which the emission requirement may be stated as an allowable limit in weight of contaminant per unit time for the emission unit(s) involved.

(2) **Time of application.** The application for an ERC must be made prior to or within 180 calendar days after the emission reduction has been accomplished.

(3) **Conditions.** An ERC may be authorized provided the following conditions have been demonstrated to the satisfaction of the Agency.

(a) No part of the emission reductions claimed for credit shall have been required pursuant to an adopted rule, Order of Approval, air discharge permit, or other applicable emission standard (e.g., NSPS, NESHAPS, BACT, MACT, RACT, LAER). The emission reductions must be permanent and enforceable.

(b) The quantity of emission reductions claimed for credit shall be less than or equal to the old allowable emissions rate or the old actual emissions rate, whichever is the lesser, minus the new allowable emissions rate. For the purposes of this regulation, the old actual emission rate ((~~shall be defined as the highest annual emission rate during either of the last two full calendar years.~~)) is the average emissions rate occurring during the most recent 24 month period preceding the request for an ERC. An alternative twenty-four month period from within the previous five years may be accepted by the Agency if the owner or operator of the source demonstrates to the satisfaction of the Agency that the alternative period is more representative of actual operations of the unit or source.

(c) The ERC application must include a description of all the changes that are required to accomplish the claimed emission reduction, such as, new control equipment, process modifications, limitation of hours of operation, permanent shutdown of equipment, specified control practices and any other pertinent supporting information.

(d) The quantity of emission reductions claimed must be greater than 1 ton/year and be readily quantifiable for the emission unit(s) involved.

(e) No part of the emission reductions claimed for credit shall have been used as part of a determination of net emission increase, nor as part of an offsetting transaction under SWCAA ((~~400-112(5)~~)) 400-111, 400-113(3), or 400-830, nor as part of a bubble transaction under SWCAA 400-120 ((~~nor to satisfy NSPS, NESHAPS, BACT, MACT, RACT, LAER or other applicable emission standard~~)).

(f) Concurrent with or prior to the authorization of an ERC, the applicant shall have received a regulatory order or permit that establishes total allowable emissions from the "stationary source" or emission unit of the contaminant for which the ERC is requested, expressed as weight of contaminant per unit time.

(g) The use of any ERC shall be consistent with all other federal, state, and local requirements of the program in which it is used.

(h) No part of the emission reduction was included in the emission inventory used to demonstrate attainment or for reasonable further progress in an amendment to the state implementation plan.

(4) **Additional information.** Within 30 calendar days after the receipt of an ERC application, supporting data and documentation, the Agency may require the submission of additional information needed to review the application.

(5) **Approval.** Within 60 calendar days after all required information has been received, the Agency shall approve or deny the application, based on a finding that conditions in subsections (3)(a) through (g) of this section have been satisfied or not. If the application is approved, the Agency shall:

(a) Issue a regulatory order pursuant to this section to assure that the emissions from the "source" will not exceed the allowable emission rates claimed in the ERC application, expressed in weight of pollutant per unit time for each emission unit involved. The regulatory order shall include any conditions required to assure that subsections (3)(a) through ((~~(g)~~)) (h) of this section will be satisfied. If the ERC depends in whole or in part upon the shutdown of equipment, the regulatory order must prohibit operation of the affected equipment; and,

(b) Issue a regulatory order with emission reduction credit. The regulatory order shall specify the issue date of the credit, the expiration date of the credit, the contaminant(s) involved, the emission decrease expressed as weight of pollutant per unit time, the nonattainment area involved, if applicable, and the person to whom the regulatory order is issued.

(6) **Maintenance and use of ERCs.** The Agency has established its policy and procedure for maintenance of ERCs in SWCAA 400-136. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-136 Maintenance of Emission Reduction Credits in Bank

(1) **Applicability.** The Agency shall maintain a bank for the purpose of administering emission reduction credits (ERCs) pursuant to the provisions of RCW 70.94.850.

(2) **Conditions for ERC bank.**

(a) ERCs established under SWCAA 400-131 shall be available for said credit bank.

(b) ERCs shall not have been used, sold or transferred to another entity for use; e.g. ERCs cannot be banked or used by two "sources" at one time.

(c) ERCs established under SWCAA 400-131 or used under SWCAA 400-130 for a specific "source" shall be allocated privately and not be available for public allocation unless specifically requested by the owner(s) of the ERCs ((~~or the owner of the ERCs fails to maintain registration with the Agency~~)).

(3) **Maintenance of the bank.**

(a) The Agency shall maintain an emission inventory of all allowed and actual emissions (including any growth allowances identified in a maintenance plan) in each of the nonattainment or maintenance areas by pollutant or in the case of ozone, it shall be volatile organic compounds and oxides of nitrogen.

(b) The ERCs contained in the bank shall be discounted by 10 percent to allow for minor emission increases in nonattainment areas by minor "sources" each of which would emit less than one ton per year. Minor emitting "sources" shall be ineligible to receive or expend an emission reduction credit as identified in SWCAA 400-131 or 400-130. ERCs shall be discounted at the applicable ratio on a one-time basis at the time of deposit into the bank. ERCs shall not be discounted each time a transaction is completed. If reductions in emission beyond those identified in the Washington SIP are required to meet an ambient air quality standard, if the standard cannot be met through controls on operating "sources," and if the plan must be revised, ERCs may be discounted by the Agency over and above the initial 10 percent without compensation to the holder after public involvement pursuant to SWCAA 400-171. Any such discount shall not exceed the percentage of additional emission reduction needed to reach or maintain attainment status.

(c) The Agency shall not provide greater than 25 percent of the available emission credit in the bank to a single applicant. Any exceptions shall be considered on a case-by-case basis by the Board of Directors after a public notice at the next regularly scheduled meeting.

(d) When the Agency issues credits for a new or modified "stationary source," the amount of emission credits shall be removed from the bank and a regulatory order allocating the emission credits shall be issued. The applicant shall start a continuous program of construction or process modification within 18 months. If the applicant does not exercise the approval, the emission credit allocation shall expire and revert to the bank. If there is a six month delay in construction after the start of a continuous program to construct or modify a "stationary source" or emission unit the remaining amount of the emission reduction credit shall be reviewed by the Agency and if it is determined that the unused portion of the credit will not, in all likelihood be used in the next year, the Agency shall notify the applicant that the credit allocation has expired and shall revert to the bank. The applicant shall reapply, as needed, for use of the emission reduction credits when a continuous program of construction or modification begins.

(4) **Annual review.** The Agency shall review the content and administration of this section annually to ensure regulatory consistency and equity of impact as a portion of the Washington SIP review. The results of the review shall be reported to the Board with recommendations for correction if the Agency deems that such corrections are necessary to properly administer the emission credit bank.

(5) **Issuance and use of ERCs.** The Agency has established its policy and procedure for deposit of ERCs in SWCAA 400-131. The Agency has established its policy and procedure for use of ERCs in SWCAA 400-130.

(6) **Expiration of public credits.**

(a) ((~~Emissions reduction credits deposited in the bank for public allocation (public bank) as the result of the 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)~~)) (b) Emission reduction credits deposited into the public bank shall not be available to be assigned to any "stationary source" after July 8, 1996.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

((~~SWCAA 400-140 Protection of Ambient Air Increments~~

~~(1) **Purpose.** This section constitutes a program to prevent significant deterioration of air quality by protecting ambient air increments.~~

~~(2) **Applicability.** This section shall apply to all "sources" within SWCAA jurisdiction.~~

~~(3) **Requirements.**~~

~~(a) Ambient air increments. The ambient impact of any proposed "source" or modification shall not cause an increase in ambient pollutant concentration over the applicable baseline concentration in excess of the following increments:~~

~~Area Designation~~	~~Pollutant~~	~~Max. allowable increase ($\mu g/m^3$)~~
	~~Particulate matter:~~	
~~Class I~~	~~PM_{10}, annual arithmetic mean~~	~~4~~
	~~PM_{10}, 24-hr maximum~~	~~8~~
~~Class II~~	~~PM10, annual arithmetic mean~~	~~17~~
	~~PM10, 24-hr maximum~~	~~30~~
	~~Sulfur dioxide~~	
~~Class I~~	~~Annual arithmetic mean~~	~~2~~
	~~24-hr maximum~~	~~5~~
	~~3-hr maximum~~	~~25~~
~~Class II~~	~~Annual arithmetic mean~~	~~20~~
	~~24-hr maximum~~	~~91~~
	~~3-hr maximum~~	~~512~~
	~~Nitrogen dioxide~~	
~~Class I~~	~~Annual arithmetic mean~~	~~2.5~~
~~Class II~~	~~Annual arithmetic mean~~	~~25~~

~~(b) Source notification. If possible over consumption of an ambient air increment is identified, the Agency shall notify the affected "source(s)" thirty days prior to taking further action. The purpose of notification is to allow the "source(s)" an opportunity to review the possible over consumption and related emission information.~~

~~(c) Air quality analysis. If possible over consumption of an ambient air increment is identified, an air quality analysis shall be conducted by the Agency or the affected "source(s)" to demonstrate compliance with the requirements of this section.~~

~~(d) Cost of air quality analysis.~~

~~(i) The cost of any air quality analysis conducted pursuant to the requirements of SWCAA 400-046 and 400-110 shall be paid by the permit applicant.~~

~~(ii) The cost of any air quality analysis conducted by the Agency pursuant to this section shall be:~~

~~(A) Assessed to the affected "source" if the identified increment violation is attributed solely to the emissions of a single "source;" or~~

~~(B) Assessed to the affected "sources" on a prorated basis if the increment violation is attributed to the combined emissions of multiple "sources" located within the affected baseline area. The prorated assessment will be based on the relative contribution of each "source" to the identified increment violation.~~

~~(e) If over consumption of an ambient air increment is demonstrated, the Agency shall take actions to require affected "sources" to reduce ambient impact to a level less than the allowable increment.))~~

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

~~((SWCAA 400-141 Prevention of Significant Deterioration (PSD)~~

~~(1)~~ **~~Program adoption.~~** ~~WAC 173-400-700 through 173-400-750, as in effect on February 10, 2005, is hereby adopted by reference.~~

~~(2)~~ **~~Permitting.~~** ~~The Agency does not currently have delegated authority from EPA to issue PSD permits. At this time, all PSD permits in the State of Washington are issued by Ecology. "Stationary sources" that comply with the provisions of WAC 173-400-700 through 173-400-750 shall be considered to have met the permitting requirements of this section. Affected "stationary sources" shall submit a copy of PSD application information to the Agency pursuant to WAC 173-400-730 (b)(iii).~~

~~(3)~~ **~~Monitoring, Recordkeeping and Reporting.~~** ~~Pursuant to WAC 173-400-720 (4)(b), a PSD applicable "stationary source" within the Agency's jurisdiction shall submit all required reports to the Agency.~~

~~(4)~~ **~~Enforcement.~~** ~~The Agency shall enforce the requirements of Ecology's PSD Program, and the terms and conditions of PSD permits issued by Ecology to "stationary sources" within the Agency's jurisdiction.~~))

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

SWCAA 400-171 Public Involvement

(1) **Public notice.**

(a) Notice shall be published on the SWCAA Internet website announcing the receipt of air discharge permit applications, nonroad engine permit applications and other proposed actions. Notice shall be published for a minimum of 15 calendar days. Publication of a notice on the SWCAA website at the time of application receipt is not required for any

application or proposed action that automatically requires a public comment period pursuant to subsection (2) of this section. In the event that publication on the SWCAA Internet website does not occur for the prescribed time period, notice will be published for a minimum of one (1) day in a newspaper of general circulation in the area of the proposed action. When notice is published via newspaper, the Agency shall not issue a final determination on the affected action for a minimum of 15 calendar days following the date of publication. Each notice shall, at a minimum, include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposed action;

(iii) Agency contact information;

(iv) A statement that a public comment period will be provided upon request pursuant to SWCAA 400-171(3); and

(v) The date by which a request for a public comment period is due.

(b) Requests for a public comment period shall be submitted to the Agency in writing via letter or fax. A request may be submitted via electronic mail provided the sender confirms receipt by the Agency via telephone or electronic receipt confirmation. A public comment period shall be provided pursuant to subsection (3) of this section for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not provided may be processed without further public involvement.

(2) **((~~Mandatory~~)) Provision of public comment period.**

(a) A public comment period shall be provided pursuant to subsection (3) of this section before approving or denying any of the following:

(i) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (as in effect on July 1, ((~~2002~~)) 2015) as part of review under SWCAA 400-046, ((~~or~~)) 400-110, or WAC 173-400-117;

(ii) Any order or permit to determine RACT;

(iii) Any order or permit to establish a compliance schedule pursuant to SWCAA 400-161 or a variance((~~. A variance shall be handled as provided in~~)) pursuant to SWCAA 400-180;

(iv) Any order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(v) Any order or permit to authorize a bubble;

(vi) Any order or permit used to establish a creditable emission reduction;

(vii) An Order of Discontinuance as provided in SWCAA 400-230 (1)(g);

(viii) Any order or permit used to establish a "synthetic minor" or modification thereof;

(ix) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;

(x) Any application or other proposed action which has received a request for public notice pursuant to subsection (1) of this section; or

(xi) Any proposed action for which the Executive Director determines there is a substantial public interest including:

- Air discharge permit applications
- Nonroad engine permit applications
- Other actions of significance

(xii) Any order or permit to approve a new or modified source if the associated increase in emissions of any toxic air pollutant is greater than the applicable acceptable source impact level specified in WAC 173-460, as in effect 8/21/98.

(b) Any air discharge permit application designated for integrated review that includes a PSD permit application((~~, an application for a "major modification" in a nonattainment area or an application for a "major stationary source" in a nonattainment area~~)) must comply with the public notice requirements of WAC ((~~173-400-171~~)) 173-400-740.

(3) **Public comment period requirements.** A public comment period shall be provided only after all information required by the Agency has been submitted and after applicable preliminary determinations, if any, have been made.

(a) Availability for public inspection. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, shall be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270.

(b) Publication of comment period notice. Notice shall be ((~~published in a newspaper of general circulation~~)) given by prominent advertisement in the area of the proposed project ((~~for a minimum of one (1) day. For applications or actions subject to a public comment period pursuant to subsections (2)(a)(x) or (2)(a)(xi) of this section, publication on the SWCAA Internet homepage for a minimum of 30 calendar days may be substituted for newspaper publication~~)). Notice for a public comment period shall include the following information:

(i) The name and address of the owner or operator and the affected facility;

(ii) A brief description of the proposal, including a description of the processes subject to permitting;

(iii) A description of the air pollutant emissions associated with the proposal;

(iv) Identification of Agency staff from whom interested persons may obtain additional information;

(((~~iii~~))) (v) The location of the documents made available for public inspection;

(((~~iv~~))) (vi) Identification of a 30 calendar day period for submitting written comment to the Agency;

(((~~v~~))) (vii) A statement that a public hearing may be held if the Agency determines within a 30 calendar day period that significant public interest exists;

(((~~vi~~))) (viii) The length of the public comment period in the event of a public hearing; and

(((~~vii~~))) (ix) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-

117(5)(c), the comment period notice shall explain the Agency's draft decision.

(c) EPA Notification. A copy of ((~~the~~)) each comment period notice shall be sent to the EPA Region 10 Regional Administrator.

(d) Consideration of public comment. The Agency shall make no final decision on any application or other action for which a public comment period has been provided until the public comment period has ended and any comments received during the public comment period have been considered.

(e) Public hearings. Any person may request a public hearing within the thirty-day public comment period. Each request shall indicate the interest of the party filing it and why a hearing is warranted. The Agency may hold a public hearing if the Executive Director determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, a minimum of 30 days notice will be provided to the public prior to the hearing date. The public comment period for the affected action shall extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(4) **Public involvement for integrated review with an operating permit.** Any air discharge permit application designated for integrated review with an application to issue or modify an operating permit shall be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC).

(5) **Other requirements of law.** Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to PSD permit applications ((~~for a "major modification" or a "major stationary source."~~)) processed by Ecology.

(6) **Public information.** All information is available for public inspection at the Agency, except information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and SWCAA 400-270. Such information includes copies of Notice of Construction applications, orders of approval, regulatory orders, and modifications thereof.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-190 Requirements for Nonattainment Areas

The development of specific requirements for nonattainment areas shall include consultation with local government in the area and ((~~shall~~)) must include public involvement per SWCAA 400-171. Requirements for new or modified "stationary sources" in nonattainment areas are found in SWCAA 400-110, ((~~and SWCAA~~)) 400-112 and 400-800 through -860.

AMENDATORY SECTION (Amending WSR 06-23-073 filed 11/13/06, effective 12/14/06)

SWCAA 400-200 Vertical Dispersion Requirement, Creditable Stack Height and Dispersion Techniques

(1) **Vertical Dispersion Requirement.** Effective December 14, 2006, all new exhaust stacks shall be configured to discharge vertically to the ambient atmosphere. Stack devices, such as rain caps, that obstruct or prevent vertical discharge are prohibited. Where possible, exhaust stacks shall discharge at a point higher than surrounding buildings and/or terrain. Alternate exhaust stack configurations may be approved by SWCAA on a case-by-case basis provided the owner/operator demonstrates that the alternate configuration will not cause or contribute to a violation of increment or a NAAQS.

The following source categories are not subject to the provisions of this section:

(a) Combustion units used for space heating provided the units are fired on natural gas, propane, or ultra low sulfur diesel (< 15 ppmw S content) and have an individual heat input rating of 2.0 MMBtu/hr or less.

(2) **Creditable Stack Height and Dispersion Techniques - Applicability.** The provisions of subsections (3) and (4) of this section are applicable to all sources except:

(a) Stacks for which construction had commenced on or before December 31, 1970, except where pollutants are being emitted from such stacks used by sources which were constructed, or reconstructed, or for which major modifications were carried out after December 31, 1970;

(b) Coal-fired steam electric generating units subject to the provisions of Section 118 of the Federal Clean Air Act, which commenced operation before July 1, 1957, and for whose stacks construction commenced before February 8, 1974;

(c) Flares;

(d) Open or outdoor burning for agricultural or silvicultural purposes as covered under ((~~the~~)) an applicable Smoke Management Plan;

(e) Residential wood combustion and open or outdoor burning for which episodic restrictions apply.

These provisions shall not be construed to limit the actual stack height.

(3) **Creditable Stack Height and Dispersion Techniques - Prohibitions.** No source may use dispersion techniques or excess stack height to meet ambient air quality standards or PSD increment limitations.

(a) Excess stack height. Excess stack height is that portion of a stack that exceeds the greater of:

(i) Sixty-five meters (213.25 feet), measured from the ground level elevation at the base of the stack; or

(ii) $H_g = H + 1.5L$ where:

H_g	=	"good engineering practice" (GEP) stack height, measured from the ground level elevation at the base of the stack,
H	=	height of nearby structure(s) measured from the ground level elevation at the base of the stack,
L	=	lesser dimension, height or projected width, of nearby structure(s), subject to the provisions below.

"Nearby," as used in this subsection for purposes of applying the GEP formula means that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometer (1/2 mile).

(b) Dispersion techniques. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This does not include:

(i) The reheating of a gas stream, following the use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) The merging of gas streams where:

(A) The source was originally designed and constructed with such merged gas streams, as demonstrated by the source owner(s) or operator(s).

(B) Such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion shall apply only to the emission limitation for the pollutant affected by such change in operation.

(C) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons, and not primarily motivated by an intent to gain emissions credit for greater dispersion.

(4) **Creditable Stack Height - Exception.** The Agency may require the use of a field study or fluid model to verify the creditable stack height for the source. This also applies to a source seeking credit after the effective date of this rule for an increase in existing stack height up to that established by the GEP formula. A fluid model or field study shall be performed according to the procedures described in the *EPA Guideline for Determination of Good Engineering Practice Height* (Technical Support Document of the Stack Height Regulations). The creditable height demonstrated by a fluid model or field study shall ensure that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(a) "Nearby," as used in this subsection for conducting a field study or fluid model, means not greater than 0.8 km, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten times the maximum height of the feature, not to exceed two miles if such feature achieves a height 0.8 km from the stack that is at least forty percent of the GEP stack height or twenty-six meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(b) "Excessive concentration" is defined for the purpose of determining creditable stack height under this subsection and means a maximum ground-level concentration owing to a significant downwash effect which contributes to excursion over an ambient air quality standard. For sources subject to PSD review (WAC 173-400-720 and 40 CFR 52.21) an excessive concentration alternatively means a maximum ground-level concentration owing to a significant downwash effect that contributes to excursion over a PSD increment. The emission rate used in this demonstration shall be the emission rate specified in the State Implementation Plan, or in the absence of such, the actual emission rate of the source. "Significant downwash effect" means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least forty percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

SWCAA 400-230 Regulatory Actions and Civil Penalties

(1) The Agency shall have the power to issue such orders as necessary to effectuate the purpose of RCW 70.94 and RCW 43.21B as provided in, but not limited to: RCW 70.94.141, RCW 70.94.152, RCW 70.94.153, RCW 70.94.-332 and RCW 43.21B.300. For informational purposes, a list of specific regulatory orders issued by the Agency in the past is presented below.

(a) **Order of Approval.** An order issued by the Agency to provide approval for an air discharge permit or ERC application. Orders of Approval are also known as air discharge permits.

(b) **Order of Denial.** An order issued by the Agency in response to an air discharge permit application that is incomplete, not feasible, proposes inadequate control technology, or otherwise would result in violation of any ambient air quality regulation, control technology requirement, or applicable emission standard.

(c) **Order of Violation.** An order issued by the Agency to document specific regulation(s) alleged to be violated and establish the facts surrounding a violation.

(d) **Order of Prevention.** An order issued by the Agency to prevent installation or construction of an emission unit, performance of an activity, or actions that may otherwise endanger public health that are on site, in the process of being installed, or have been installed, constructed or operated without prior Agency review and approval, or actions being conducted in addition to a previous Agency approval without prior approval.

(e) **Consent Order.** An order issued by the Agency to establish emission limits, operation and maintenance limits or controls, monitoring or reporting requirements, testing requirements, or other limits or controls that are determined by the Agency to be necessary. Actions identified in a Consent Order may be necessary to demonstrate compliance with applicable regulations, provide measures whereby a "source" may take the necessary steps to achieve compliance, establish a schedule for activities, or provide other information that the Control Officer deems appropriate. Consent Orders are agreed to and signed by an appropriate officer of the company or "source" for which the Consent Order is prepared and

the Control Officer, or designee, of the Agency. A Consent Order does not sanction noncompliance with applicable requirements.

(f) **Compliance Schedule Order.** An order issued by the Agency to a "source" to identify specific actions that must be implemented to establish, maintain, and/or demonstrate compliance with applicable regulations and identify the schedule by which these actions must be completed.

(g) **Order of Discontinuance.** An order issued by the Agency for any "source" that has permanently shutdown, has not maintained registration for affected emission units, or that continues to operate in violation of applicable regulations and requirements.

(h) **Corrective Action Order.** An order issued by the Agency to any "source" to provide measures to correct or rectify a situation that is an immediate or eminent threat to person(s) or the public or that may be in violation or have the potential of being in violation of federal, state and local regulations or may pose a threat to the public health, welfare or enjoyment of personal or public property.

(i) **Administrative Order.** An order issued by the Agency to provide for implementation of items not addressed above, that are identified by the Control Officer. An Administrative Order may contain emission limits, operating and maintenance limitations and actions, schedules, resolutions by the Board of Directors, provide for establishing attainment or nonattainment boundaries, establish working relationships with other regulatory agencies, establish authority for enforcement of identified actions, and other activities identified by the Agency.

(j) **Resolutions.** A document issued by the Agency as a means to record a Board of Directors decision, authorize or approve budget transactions, establish Agency policies, or take other actions as determined by the Agency.

(2) The Agency may take any of the following regulatory actions to enforce its regulations to meet the provisions of RCW 43.21B.300 which is incorporated herein by reference.

(a) **Notice of Violation.** At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the Agency shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this regulation, or the rule, regulation, regulatory order or permit requirement alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the Agency may require that the alleged violator or violators appear before it for the purpose of providing the Agency information pertaining to the violation or the charges complained of. Every Notice of Violation shall offer to the alleged violator an opportunity to meet with the Agency prior to the commencement of enforcement action.

(b) **Civil penalties.**

(i) In addition to or as an alternate to any other penalty provided by law, any person (e.g., owner, owner's agent, contractor, operator) who violates any of the provisions of Chapter 70.94 ((~~or 70.120 RCW,~~)) or any of the rules in force under such chapters may incur a civil penalty in an amount as set forth in RCW 70.94.431. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Any person who fails to take action as specified by an order issued pursuant to this regulation shall be liable for a civil penalty as set forth by RCW 70.94.431 for each day of continued noncompliance.

(ii) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal. The maximum penalty amounts established in RCW 70.94.431 may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

(iii) Each act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300. ((~~Section 113 (e)(2) of the 1990 Clean Air Act Amendments provides that the number of "days of violation" is to be counted beginning on the first proven day of violation and continuing every day until the violator demonstrates that it achieved continuous compliance, unless the violator can prove by preponderance of the evidence that there were intervening days on which no violation occurred. This definition applies to all civil and administrative penalties.~~))

(iv) All penalties recovered under this section by the Agency, shall be paid into the treasury of the Agency and credited to its funds.

(v) To secure the penalty incurred under this section, the Agency shall have a lien on any equipment used or operated in violation of its regulations which shall be enforced as provided in RCW 60.36.050. The Agency shall also be authorized to utilize a collection agency for nonpayment of penalties and fees.

(vi) In addition to other penalties provided by this regulation, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(3) **Assurance of Discontinuance.** The Control Officer may accept an assurance of discontinuance as provided in RCW 70.94.435 of any act or practice deemed in violation of this regulation as written and certified to by the "source." Any such assurance shall specify a time limit during which discontinuance or corrective action is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of its regulations or any order issued there under which make the alleged act or practice unlawful for the purpose of securing an injunction or other relief from the Superior Court.

(4) **Restraining orders & injunctions.** Whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of its regulations, the Control Officer, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is

alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order.

(5) **Emergency episodes.** The Agency may issue such orders as authorized by SWCAA 435 whenever an air pollution episode forecast is declared.

(6) **Compliance Orders.** The Agency may issue a Compliance Order in conjunction with a Notice of Violation or when the Control Officer has reason to believe a regulation is being violated, or may be violated. The order shall require the recipient of the Notice of Violation either to take necessary corrective action or to submit a plan for corrective action and a date when such action will be initiated and completed. Compliance Orders are not subject to the public notice requirements of SWCAA 400-171.

NEW SECTION

SWCAA 400-800 Major Stationary Source and Major Modification in a Nonattainment Area.

SWCAA 400-800 through 400-860 shall apply to any new major stationary source or major modification of an existing major stationary source located in a designated nonattainment area that is major for the pollutant or pollutants for which the area is designated as not in attainment of one or more national ambient air quality standards.

NEW SECTION

SWCAA 400-810 Major Stationary Source and Major Modification Definitions.

The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in SWCAA 400-800 through 400-860. If a term is defined differently in the federal program requirements for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in SWCAA 400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit program.

(1) "**Actual emissions**" means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under SWCAA 400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24 month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "**Baseline actual emissions**" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24 month period selected by the owner or operator within the 5 year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24 month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24 month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24 month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under SWCAA 400-800 through 400-860 or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed

source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24 month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24 month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24 month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24 month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive 24 month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) "**Best available control technology**" (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines if it is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(4) "**Building, structure, facility, or installation**" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(5) "**Clean coal technology**" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(6) "**Clean coal technology demonstration project**" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(7) "**Construction**" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(8) "**Continuous emissions monitoring system**" (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(9) "**Continuous parameter monitoring system**" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate,

O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

(10) "**Continuous emissions rate monitoring system**" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(11) "**Electric utility steam generating unit**" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(12) "**Emissions unit**" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(13) "**Fugitive emissions**" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see SWCAA 400-840(7)) and for PALs (see SWCAA 400-850).

(14) "**Lowest achievable emission rate**" (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(15) "**Major stationary source**" means:

(a) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator);

(vi) 70 tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of SWCAA 400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

(16) "**Major modification**" means:

(a) Any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR Part 51, Appendix S adopted by reference in SWCAA 400-850 shall apply.

(e) For the purpose of applying the requirements of SWCAA 400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(17) "**Necessary preconstruction approvals or permits**" means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(18) "**Net emissions increase**" means:

(a) With respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to SWCAA 400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than 1 year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under SWCAA 400-113(3) or 400-830 or in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(19) "**Nonattainment major new source review (NSR) program**" means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51 Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(20) "**Pollution prevention**" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(21) "**Predictive emissions monitoring system**" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(22) "**Prevention of significant deterioration (PSD) permit**" means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(23) "**Project**" means a physical change in, or change in the method of operation of, an existing major stationary source.

(24) "**Projected actual emissions**" means:

(a) The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12 month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24 month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(25) "**Regulated NSR pollutant**" means the following pollutants:

(a)(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide and nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or

after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of SWCAA 400-800 through 400-850 made without accounting for condensable particulate matter shall not be considered in violation of SWCAA 400-800 through 400-850.

(26) "**Replacement unit**" means:

(a) An emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s) and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(27) "**Reviewing authority**" means the same as "permitting authority" as defined in SWCAA 400-030.

(28) "**Significant**" means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	*Emission Rate*
Carbon monoxide	100 tpy
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Ozone	40 tpy of volatile organic compounds; or 40 tpy of nitrogen oxides
Lead	0.6 tpy
PM-10	15 tpy
PM-2.5	10 tpy of direct PM-2.5 emissions; or 40 tpy of nitrogen oxide emissions; or 40 tpy of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(c) For the purposes of applying the requirements of SWCAA 400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(29) "**Significant emissions increase**" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(30) "**Source**" and "stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(31) "**Temporary clean coal technology demonstration Project**" means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

NEW SECTION

SWCAA 400-820 Determining If a New Stationary Source or Modification to a Stationary Source is Subject to These Requirements

(1) Any new major stationary source located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, that would be major for the pollutant for which the area is designated nonattainment is subject to the permitting requirements of SWCAA 400-830 through 400-850. Any major modification of an existing major stationary source that is major for the pollutant for which an area is designated nonattainment, is located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, and has a significant net emissions increase of the pollutant for which the area is designated nonattainment, is subject to the permitting requirements of SWCAA 400-830 through 400-850. The procedures provided below must be used to determine if a modification would result in a significant net emissions increase of the nonattainment pollutant.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in SWCAA 400-810 (15)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in SWCAA 400-810 (15)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in SWCAA 400-850.

(5) The following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the

definition of projected actual emissions contained in SWCAA 400-810 (24)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of projected actual emissions contained in SWCAA 400-810 (24)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This information may be submitted in conjunction with any NOC application required under the provisions of SWCAA 400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

(d) The owner or operator shall submit a report to the permitting authority within 60 calendar days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within 60 calendar days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in WAC 173-401.

NEW SECTION

SWCAA 400-830 Permitting Requirements.

(1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to SWCAA 400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with SWCAA 400-110 (3)(c) and 400-113(3) for all air contaminants for which the area has not been designated nonattainment.

(b) The permitting authority has determined, based on review of an analysis performed by the owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable new source performance standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source is major or for which the existing stationary source is major and the proposed modification is significant.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in SWCAA 400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major sta-

tionary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the proposed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program under 40 CFR 52.21 delegated to Ecology by EPA Region 10, while such delegated program remains in effect. The proposed new major stationary source or major modification will comply with the PSD Program in WAC 173-400-700 through 173-400-750 for all air contaminants for which the area has not been designated nonattainment when that PSD program has been approved into the Washington SIP.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO_X waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 CFR 51.165, or the requirements of 40 CFR Part 51, Appendix S, shall apply to the source or modification as though construction had not yet commenced on the source or modification. The requirements of 40 CFR Part 51, Appendix S shall not apply to a new or modified source for which enforceable limitations are established after SWCAA 400-800 through 400-850 have been approved into the Washington SIP.

NEW SECTION

SWCAA 400-840 Emission Offset Requirements.

(1) The ratio of total actual emissions reductions to the emissions increase shall be 1.1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of SWCAA 400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1.1:1;

(b) In any moderate nonattainment area for ozone - 1.15:1;

(c) In any serious nonattainment area for ozone - 1.2:1;

(d) In any severe nonattainment area for ozone - 1.3:1; and

(e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of SWCAA 400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of SWCAA 400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under SWCAA 400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for allowable emissions occurring during stationary source startup and shutdown.

(8) Emission offsets, including those described in an emission reduction credit issued under SWCAA 400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction resulting from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

(9) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

NEW SECTION

SWCAA 400-850 Actual Emissions - Plantwide Applicability Limitation (PAL)

The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of May 1, 2012, is adopted by reference with the following exceptions:

(1) The term "reviewing agency" means "permitting agency" as defined in SWCAA 400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to WAC 173-401.

(3) The reference to 40 CFR 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

NEW SECTION

SWCAA 400-860 Public Involvement Procedures

The public involvement procedures in SWCAA 400-171 shall be followed, including joint public notifications (integrated review) with any proposed notice of construction approval for the project. Any permit issued pursuant to SWCAA 400-830 or 400-850 must comply with SWCAA 400-171.

AMENDATORY SECTION (Amending WSR 03-21-045 filed 10/9/03, effective 11/9/03)

APPENDIX A
SWCAA METHOD 9
VISUAL OPACITY DETERMINATION METHOD

1. Principle

The opacity of emissions from stationary sources is determined visually by a qualified observer.

2. Procedure

The observer must be certified in accordance with the provisions of Section 3 of 40 CFR Part 60, Appendix A, Method 9, as in effect on July 1, ((~~2002~~)) 2015.

2.1 Position

The observer shall stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140° sector to his/her back. Consistent with maintaining the above requirement, the observer shall, as much as possible, make his/her observations from a position such that his/her line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g., roof monitors, open baghouses, noncircular stacks), approximately perpendicular to the longer axis of the outlet. The observer's line of sight should not include more than one plume at a time when multiple stacks are involved, and in any case, the observer should make his/her observations with his/her line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g., stub stacks on baghouses).

2.2 Field Records

The observer shall record the name of the plant, emission location, type of facility, observer's name and affiliation, a sketch of the observer's position relative to the source, and the date on a field data sheet. The time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume background are recorded on a field data sheet at the time opacity readings are initiated and completed.

2.3 Observations

Opacity observations shall be made at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. The observer shall not look continuously at the plume, but instead shall observe the plume momentarily at 15-second intervals.

2.3.1 Attached Steam Plumes

When condensed water vapor is present within the plume as it emerges from the emission outlet, opacity observations shall be made beyond the point in the plume at which condensed water vapor is no longer visible. The observer shall record the approximate distance from the emission outlet to the point in the plume at which the observations are made.

2.3.2 Detached Steam Plumes

When water vapor in the plume condenses and becomes visible at a distinct distance from the emission outlet, the opacity of emissions should be evaluated at the emission outlet prior to the condensation of water vapor and the formation of the steam plume.

2.4 Recording Observations

Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals on a field data sheet. A minimum of 24 observations shall be recorded. Each momentary observation recorded shall be deemed to represent the average opacity of emissions for a 15-second period.

2.5 Data Reduction

The number of observations at each opacity level shall be determined and recorded on the field data sheet. Opacity shall be determined by the highest 13 observations in any consecutive 60-minute period. The opacity standard or emissions limit is exceeded if there are more than 12 observations during any consecutive 60-minute period for which an opacity greater than the standard or emission limit is recorded. The opacity standard is a 1 hour standard (rolling 60 minutes). Only one violation of the standard per hour may be recorded meaning that a violation for any given consecutive 60-minute period may be recorded in substantially fewer than 60 minutes. No one-hour time sets shall overlap for purpose of determining a violation or violations. Data used to establish a violation in one consecutive 60-minute period can not be used to establish a violation in a second consecutive 60-minute period.

3. References

Federal Register, Vol. 36, No. 247, page 24895, December 23, 1971.

"Criteria for Smoke and Opacity Training School 1970 - 1971" Oregon-Washington Air quality Committee."

"Guidelines for Evaluation of Visible Emissions" EPA 340/1-75-007."

Notes: (1) The difference between the SWCAA Method 9 and WDOE Method 9 or WDOE Method 9A is the SWCAA method does not recommend that the observer make note of the ambient relative humidity, ambient temperature, the point in the plume that the observations were made, the estimated depth of the plume at the point of observation, and the color and condition of the plume. In addition, the SWCAA method does not recommend that pictures be taken.

(2) The difference between the SWCAA Method 9 and EPA Method 9 is in the data reduction section. The SWCAA method establishes a three-minute period in any one-hour period where opacity can not exceed an opacity limit. For the SWCAA method, 13 readings in a 1-hour period or less, above the established opacity limit, no matter how much, constitutes a violation. The EPA method is an arithmetic average of any 24 consecutive readings at 15-second intervals. These values are averaged and this average value cannot exceed the established opacity limit.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 01-05-058 filed 2/15/01, effective 3/18/01)

APPENDIX B

Description of Vancouver Ozone and Carbon Monoxide Maintenance Plan Boundary

The ozone and carbon monoxide maintenance area boundary description begins at the northwest corner at the

intersection of the section line on the south side of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W. The boundary turns southward following the east shores of Lake River, until it would intersect with the 14900 block NW, then easterly to join with NW 149th Street. This boundary runs until it meets the western edge of Interstate 5, then north to 159th Street and east on 159th Street to the east side of NE 50th Avenue. On 50th Avenue the boundary runs south until it joins the south bank of Salmon Creek, following the south branch of the creek until it reaches NE Caples Road, then southerly on the west side of Caples Road (currently SR-502) until it intersects with NE 144th Street. The boundary continues eastward along the south side of NE 144th Street following the 14400 block plane to where it would join with the west side of NE 212 Avenue, then southward to the south side of NE 109th Street. The boundary continues east on NE 109th Street, then southerly along the west side of NE 232 Avenue to where the 23200 block joins with the northern edge of NE 58th Street. The boundary continues east on NE 58th Street until the 5800 block intersects with the western edge of Livingston Road. The boundary follows Livingston Road South until it turns into NE 292nd Avenue. Staying on the plane of the 29200 block, the boundary proceeds south until it joins SE Blair Road. The boundary follows along the south-west side of Blair Road south-eastward to its intersection with Washougal River Road. The boundary proceeds eastward at the northern edge of the 2000 block to SE 20th Street. The boundary continues east on SE 20th Street until it intersects the western edge of SE Jennings Road (352nd Avenue), then south along the 4900 plane to SE 49th Avenue. The boundary follows the 4900 plane south until it intersects Evergreen Boulevard (the eastern edge of current Washougal City limits). The boundary continues south along the Washougal City limits to the State border along the section line on the west side of Section 21 of T1N.R4E. The boundary follows the Clark County line (State boundary) down the Columbia River until it connects at the northwest corner of the boundary at the section line of Section 36 of T4N.R1W and the north side of Section 1 of T3N.R1W.

Note: The Columbia River is the common boundary shared by Washington and Oregon for the Portland-Vancouver carbon monoxide and ozone non-attainment area.

((~~Map of Vancouver Ozone and Carbon Dioxide Maintenance Area Boundary~~))

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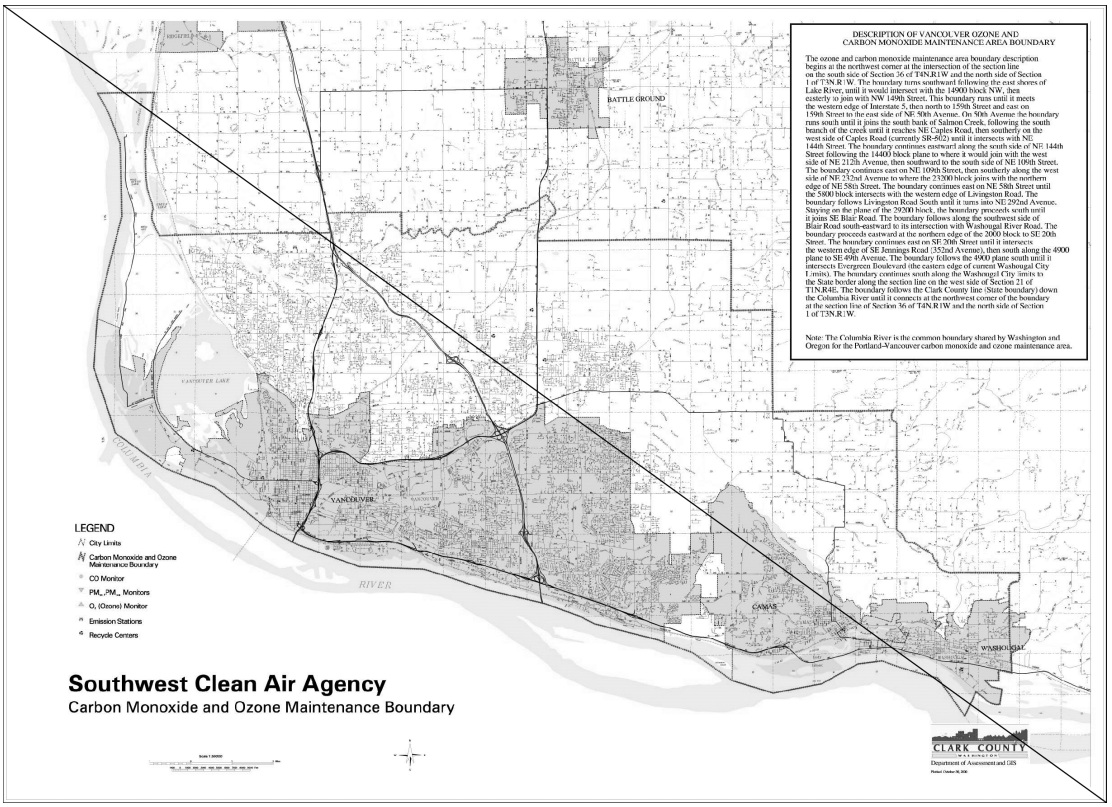

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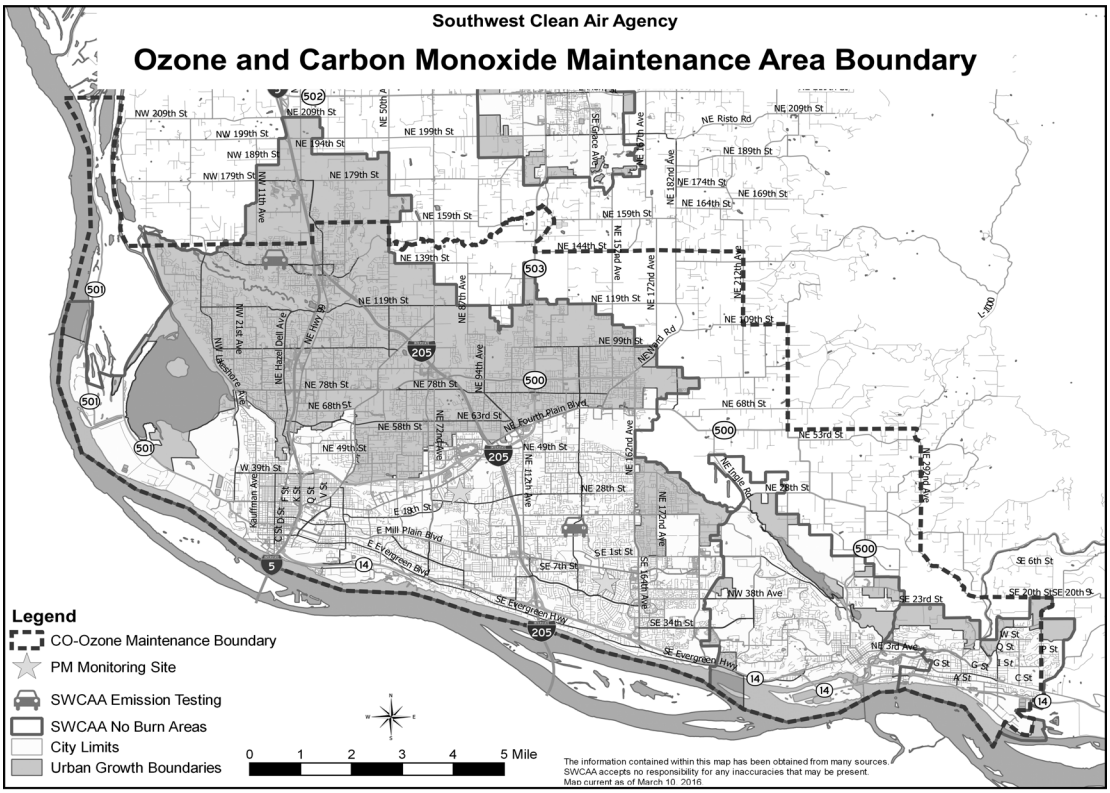

AMENDATORY SECTION (Amending WSR 09-21-056 filed 10/15/09, effective 11/15/09)

APPENDIX C
FEDERAL STANDARDS ADOPTED BY REFERENCE

The following lists of affected subparts ((~~is~~)) are provided for informational purposes only.

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

(NSPS) 40 CFR 60

Subpart A	General Provisions (re105f. 40 CFR 60.1 et seq.)
Subpart D	Fossil Fuel-fired Steam Generators for Which Construction is Commenced After August 17, 1971, and Prior to September 19, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40 et seq.)
Subpart Da	Electric Utility Steam Generating Units for Which Construction Commenced After September 18, 1978, Which Have a Heat Input Greater Than 73 Megawatts but not Greater Than 250 Megawatts (ref. 40 CFR 60.40a et seq.)
Subpart Db	Industrial-Commercial-Institutional Steam Generating Units for Which Construction Commenced After June 19, 1984, and Prior to June 19, 1986, Which Have a Heat Input Greater Than 29 Megawatts but less Than 73 Megawatts (ref. 40 CFR 60.40b et seq.)
Subpart Dc	Small Industrial-Commercial-Institutional Steam Generating Units (ref. 40 CFR 60.40c et seq.)
Subpart E	Incinerators (ref. 40 CFR 60.50 et seq.)
Subpart Ea	Municipal Waste Combustors for Which Construction Commenced After December 20, 1989 and on or Before September 20, 1994 (ref. 40 CFR 60.50a et seq.)
Subpart Eb	Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification of Reconstruction is Commenced After June 19, 1996 (ref. 40 CFR 60.50b et seq.)
Subpart Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996 (ref. 40 CFR 60.50c et seq.)

Subpart F	Portland Cement Plants (ref. 40 CFR 60.60 et seq.)
Subpart G	Nitric Acid Plants (ref. 40 CFR 60.70 et seq.)
Supbart Ga	Nitric Acid Plants for Which Construction, Reconstruction, or modification Commenced After October 14, 2001 (ref. 40 CFR 60.70a et seq.)
Subpart H	Sulfuric Acid Plants (ref. 40 CFR 60.80 et seq.)
Subpart I	Hotmix Asphalt Facilities (ref. 40 CFR 60.90 et seq.)
Subpart J	Petroleum Refineries Which Produce Less Than 25,000 Barrels per Day of Refined Products (ref. 40 CFR 60.100 et seq.)
Subpart Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007 (ref. 40 CFR 60.100a et seq.)
Subpart K	Storage Vessels for Petroleum Liquids Constructed After June 11, 1973, and Prior to May 19, 1978, Which Have a Capacity Greater Than 40,000 Gallons (ref. 40 CFR 60.110 et seq.)
Subpart Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984 (ref. 40 CFR 60.110a et seq.)
Subpart Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) Constructed, Reconstructed, or Modified After July 23, 1984 (ref. 40 CFR 60.110b et seq.)
Subpart L	Secondary Lead Smelters (ref. 40 CFR 60.120 et seq.)
Subpart M	Brass and Bronze Ingot Production Plants (ref. 40 CFR 60.130 et seq.)
Subpart N	Iron and Steel Plants (ref. 40 CFR 60.140 et seq.)
Subpart Na	Secondary Emissions From Basic Oxygen Process Steel Making Facilities (ref. 40 CFR 60.140 et seq.)
Subpart O	Sewage Treatment Plants (ref. 40 CFR 60.150 et seq.)
Subpart P	Primary Copper Smelters (ref. 40 CFR 60.160 et seq.)
Subpart Q	Primary Zinc Smelters (ref. 40 CFR 60.170 et seq.)
Subpart R	Primary Lead Smelters (ref. 40 CFR 60.180 et seq.)
Subpart S	Primary Aluminum Reduction Plants (ref. 40 CFR 60.190 et seq.)
Subpart T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants (ref. 40 CFR 60.200 et seq.)
Subpart U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants (ref. 40 CFR 60.210 et seq.)
Subpart V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants (ref. 40 CFR 60.220 et seq.)
Subpart W	Phosphate Fertilizer Industry: Triple Superphosphate Plants (ref. 40 CFR 60.230 et seq.)
Subpart X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities (ref. 40 CFR 60.240 et seq.)
Subpart Y	Coal Preparation Plants (ref. 40 CFR 60.250 et seq.)
Subpart Z	Ferroalloy Production Facilities (ref. 40 CFR 60.260 et seq.)
Subpart AA	Steel Plants: Electric Arc Furnaces (ref. 40 CFR 60.270 et seq.)
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels (ref. 40 CFR 60.270a et seq.)
Subpart BB	Kraft Pulp Mills (ref. 40 CFR 60.280 et seq.)
Subpart CC	Glass Manufacturing Plants (ref. 40 CFR 60.290 et seq.)
Subpart DD	Grain Elevators (ref. 40 CFR 60.300 et seq.)
Subpart EE	Industrial Surface Coating: Metal Furniture (ref. 40 CFR 60.310 et seq.)
Subpart GG	Stationary Gas Turbines (ref. 40 CFR 60.330 et seq.)
Subpart HH	Lime Manufacturing Plants (ref. 40 CFR 60.340 et seq.)
Subpart KK	Lead-Acid Battery Plants (ref. 40 CFR 60.370 et seq.)
Subpart LL	Metallic Mineral Processing Plants (ref. 40 CFR 60.380 et seq.)
Subpart MM	Automobile and Light Duty Truck Surface Coating Operations (ref. 40 CFR 60.390 et seq.)
Subpart NN	Phosphate Rock Plants (ref. 40 CFR 60.400 et seq.)

Subpart PP	Ammonium Sulfate Manufacture (ref. 40 CFR 60.420 et seq.)
Subpart QQ	Publication Rotogravure Printing (ref. 40 CFR 60.430 et seq.)
Subpart RR	Pressure Sensitive Tape and Label Surface Coating Operations (ref. 40 CFR 60.440 et seq.)
Subpart SS	Industrial Surface Coating: Large Appliances (ref. 40 CFR 60.450 et seq.)
Subpart TT	Industrial Surface Coating: Metal Coils (ref. 40 CFR 60.460 et seq.)
Subpart UU	Asphalt Processing and Asphalt Roofing Manufacture (ref. 40 CFR 60.470 et seq.)
Subpart VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After January 5, 1981, and on or before November 7, 2006 (ref. 40 CFR 60.480 et seq.)
Subpart VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.480a et seq.)
Subpart WW	Beverage Can Surface Coating Operations (ref. 40 CFR 60.490 et seq.)
Subpart XX	Bulk Gasoline Terminals (ref. 40 CFR 60.500 et seq.)
Subpart AAA	New Residential Wood Heaters (ref. 40 CFR 60.530 et seq.)
Subpart BBB	Rubber Tire Manufacturing Industry (ref. 40 CFR 60.540 et seq.)
Subpart DDD	VOC Emissions From the Polymer Manufacturing Industry (ref. 40 CFR 60.560 et seq.)
Subpart FFF	Flexible Vinyl and Urethane Coating and Printing (ref. 40 CFR 60.580 et seq.)
Subpart GGG	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After January 4, 1983, and on or before November 7, 2006 (ref. 40 CFR 60.590 et seq.)
Subpart GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (ref. 40 CFR 60.590a et seq.)
Subpart HHH	Synthetic Fiber Production Facilities (ref. 40 CFR 60.600 et seq.)
Subpart III	VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes (ref. 40 CFR 60.610 et seq.)
Subpart JJJ	Petroleum Dry Cleaners (ref. 40 CFR 60.620 et seq.)
Subpart KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants (ref. 40 CFR 60.630 et seq.)
Subpart LLL	Onshore Natural Gas Processing; SO_2 Emissions (ref. 40 CFR 60.640 et seq.)
Subpart NNN	VOC Emissions From Synthetic Organic Chemical Manufacturing Industry Distillation Operations (ref. 40 CFR 60.660 et seq.)
Subpart OOO	Nonmetallic Mineral Processing Plants (ref. 40 CFR 60.670 et seq.)
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants (ref. 40 CFR 60.680 et seq.)
Subpart QQQ	VOC Emissions From Petroleum Refinery Waste Water Emissions (ref. 40 CFR 60.690 et seq.)
Subpart RRR	Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes (ref. 40 CFR 60.700 et seq.)
Subpart SSS	Magnetic Tape Coating Facilities (ref. 40 CFR 60.710 et seq.)
Subpart TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines (ref. 40 CFR 60.720 et seq.)
Subpart UUU	Calciners and Dryers in Mineral Industries (ref. 40 CFR 60.730 et seq.)
Subpart VVV	Polymeric Coating of Supporting Substrates Facilities (ref. 40 CFR 60.740 et seq.)
Subpart WWW	Municipal Solid Waste Landfills Constructed, Reconstructed or Modified on or After May 30, 1991 (ref. 40 CFR 60.750 et seq.) (See SWCAA 400-070(8) for rules regulating MSW landfills constructed or modified before May 30, 1991)
Subpart AAAA	Small Municipal Waste Combustion Units Constructed After August 30, 1999, or Modified or Reconstructed After June 6, 2001 (ref. 40 CFR 60.1000 et seq.) *(See SWCAA 400-050(5) for rules regulating small municipal waste combustion units constructed on or before August 30, 1999)*

Subpart CCCC	Commercial and Industrial Solid Waste Incinerators Constructed After November 30, 1999; or Modified or Reconstructed on or After June 1, 2001 (ref. 40 CFR 60.2000 et seq.) *(See SWCAA 400-050(4) for Rules Regulating Commercial and Industrial Solid Waste Incinerators Constructed on or Before November 30, 1999)*
Subpart EEEE	Other Solid Waste Incineration Unit for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006. (ref. 40 CFR 60.2880 et seq.)
((~~Subpart 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.)
Subpart LLLL	Sewage Sludge Incineration Units (ref. 40 CFR 60.4760 et seq.)
Subpart OOOO	Crude Oil and Natural Gas Production, Transmission and Distribution (ref. 40 CFR 60.5360 et seq.)
Subpart QQQQ	New Residential Hydronic Heaters and Forced-air Furnaces (ref. 40 CFR 60.5472 et seq.)
Appendix A	Test Methods (ref. 40 CFR 60, Appendix A)
Appendix B	Performance Specifications (ref. 40 CFR 60, Appendix B)
Appendix C	Determination of Emission Rate Change (ref. 40 CFR 60, Appendix C)
Appendix D	Required Emission Inventory Information (ref. 40 CFR 60, Appendix D)
Appendix F	Quality Assurance Procedures (ref. 40 CFR 60, Appendix F)
Appendix I	Removable Label and Owner's Manual (ref. 40 CFR 60, Appendix I)

NATIONAL EMISISON STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) 40 CFR 61

Subpart A	General Provisions (ref. 40 CFR 61.01 et seq.)
Subpart B	Radon Emissions from Underground Uranium Mines (ref. 40 CFR 61.20 et seq.)
Subpart C	Beryllium (ref. 40 CFR 61.30 et seq.)
Subpart D	Beryllium Rocket Motor Firing (ref. 40 CFR 61.40 et seq.)
Subpart E	Mercury (ref. 40 CFR 61.50 et seq.)
Subpart F	Vinyl Chloride (ref. 40 CFR 61.60 et seq.)
Subpart H	Emissions of Radionuclides Other Than Radon from Department of Energy Facilities (ref. 40 CFR 61.90 et seq.)
Subpart I	Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and not Covered by Subpart H (ref. 40 CFR 61.100 et seq.)
Subpart J	Equipment Leaks (Fugitive Emission Sources) of Benzene (ref. 40 CFR 61.110 et seq.)
Subpart K	Radionuclide Emissions from Elemental Phosphorus Plants (ref. 40 CFR 61.120 et seq.)
Subpart L	Benzene Emissions from Coke by Product Recovery Plants (ref. 40 CFR 61.130 et seq.)
Subpart M	Asbestos (ref. 40 CFR 61.140 et seq.)
Subpart N	Inorganic Arsenic Emissions from Glass Manufacturing Plants (ref. 40 CFR 61.160 et seq.)
Subpart O	Inorganic Arsenic Emissions from Primary Copper Smelters (ref. 40 CFR 61.170 et seq.)
Subpart P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities (ref. 40 CFR 61.180 et seq.)
Subpart Q	Radon Emissions from Department of Energy Facilities (ref. 40 CFR 61.190 et seq.)
Subpart R	Radon Emissions from Phosphogypsum Stacks (ref. 40 CFR 61.200 et seq.)
Subpart T	Radon Emissions from the Disposal of Uranium Mill Tailings (ref. 40 CFR 61.220 et seq.)
Subpart V	Equipment Leaks (Fugitive Emission Sources) (ref. 40 CFR 61.240 et seq.)

Subpart W	Radon Emissions from Operating Mill Tailings (ref. 40 CFR 61.250 et seq.)
Subpart Y	Benzene Emissions from Benzene Storage Vessels (ref. 40 CFR 61.270 et seq.)
Subpart BB	Benzene Emissions from Benzene Transfer Operations (ref. 40 CFR 61.300 et seq.)
Subpart FF	Benzene Waste Operations (ref. 40 CFR 61.340 et seq.)

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES (MACT) 40 CFR 63

Subpart A	General Provisions (ref. 40 CFR 63.1 et seq.)
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(G) and 112(J) (ref. 40 CFR 63.50 et seq.)
Subpart D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants (ref. 40 CFR 63.70 et seq.)
Subpart F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry (ref. 40 CFR 63.100 et seq.)
Subpart G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (ref. 40 CFR 63.110 et seq.)
Subpart H	Organic Hazardous Air Pollutants for Equipment Leaks (ref. 40 CFR 63.160 et seq.)
Subpart I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (ref. 40 CFR 60.190 et seq.)
Subpart J	Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 60.210 et seq.)
Subpart L	Coke Oven Batteries (ref. 40 CFR 63.300 et seq.)
Subpart M	Perchloroethylene Air Emission Standards for Dry Cleaning Facilities (*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 Semichemical Pulp Mills (ref. 40 CFR 63.860 et seq.)
Subpart NN	Wool Fiberglass Manufacturing at Area Sources (ref. 40 CFR 63.880 et seq.)
Subpart OO	Tanks - Level 1 (ref. 40 CFR 63.900 et seq.)
Subpart PP	Containers (ref. 40 CFR 63.920 et seq.)
Subpart QQ	Surface Impoundments (ref. 40 CFR 63.940 et seq.)
Subpart RR	Individual Drain Systems (ref. 40 CFR 63.960 et seq.)
Subpart SS	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (ref. 40 CFR 63.980 et seq.)
Subpart TT	Equipment Leaks - Control Level 1 (ref. 40 CFR 63.1000 et seq.)
Subpart UU	Equipment Leaks - Control Level 2 (ref. 40 CFR 63.1019 et seq.)
Subpart VV	Oil-Water Separators and Organic - Water Separators (ref. 40 CFR 63.1040 et seq.)
Subpart WW	Storage Vessels (Tanks) - Control Level 2 (ref. 40 CFR 63.1060 et seq.)
Subpart XX	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations (ref. 40 CFR 63.1080 et seq.)
Subpart YY	Generic Maximum Achievable Control Technology (ref. 40 CFR 63.1100 et seq.)
Subpart CCC	Steel Pickling - HCL Process Facilities and Hydrochloric Acid Regeneration Plants (ref. 40 CFR 63.1155 et seq.)
Subpart DDD	Mineral Wool Production (ref. 40 CFR 63.1175 et seq.)
Subpart EEE	Hazardous Waste Combustors (ref. 40 CFR 63.1200 et seq.)
Subpart GGG	Pharmaceuticals Production (ref. 40 CFR 63.1250 et seq.)
Subpart HHH	Natural Gas Transmission and Storage Facilities (ref. 40 CFR 63.1270 et seq.)
Subpart III	Flexible Polyurethane Foam Production (ref. 40 CFR 63.1290 et seq.)
Subpart JJJ	Group IV Polymers and Resins (ref. 40 CFR 63.1310 et seq.)
Subpart LLL	Portland Cement Manufacturing Industry (ref. 40 CFR 63.1340 et seq.)
Subpart MMM	Pesticide Active Ingredient Production (ref. 40 CFR 63.1360 et seq.)
Subpart NNN	Wool Fiberglass Manufacturing (ref. 40 CFR 63.1380 et seq.)
Subpart OOO	Manufacture of Amino/Phenolic Resins (ref. 40 CFR 63.1400 et seq.)
Subpart PPP	Polyether Polyols Production (ref. 40 CFR 63.1420 et seq.)
Subpart QQQ	Primary Copper Smelting (ref. 40 CFR 63.1440 et seq.)
Subpart RRR	Secondary Aluminum Production (ref. 40 CFR 63.1500 et seq.)
Subpart TTT	Primary Lead Smelting (ref. 40 CFR 63.1541 et seq.)
Subpart UUU	Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units (ref. 40 CFR 63.1560 et seq.)
Subpart VVV	Publicly Owned Treatment Works (ref. 40 CFR 63.1580 et seq.)
Subpart XXX	Ferroalloys Production: Ferromanganese and Silicomanganese (ref. 40 CFR 63.1650 et seq.)
Subpart AAAA	Municipal Solid Waste Landfills (ref. 40 CFR 63.1930 et seq.)
Subpart CCCC	Manufacturing of Nutritional Yeast (ref. 40 CFR 63.2130 et seq.)
Subpart DDDD	Plywood and Composite Wood Products (ref. 40 CFR 63.2230 et seq.)
Subpart EEEE	Organic Liquids Distribution (Non-Gasoline) (ref. 40 CFR 63.2330 et seq.)
Subpart FFFF	Miscellaneous Organic Chemical Manufacturing (ref. 40 CFR 63.2430 et seq.)
Subpart GGGG	Solvent Extraction for Vegetable Oil Production (ref. 40 CFR 63.2830 et seq.)
Subpart HHHH	Wet-Formed Fiberglass Mat Production (ref. 40 CFR 63.2980 et seq.)
Subpart IIII	Surface Coating of Automobiles and Light-Duty Trucks (ref. 40 CFR 63.3080 et seq.)
Subpart JJJJ	Paper and Other Web Coating (ref. 40 CFR 63.3280 et seq.)

Subpart KKKK	Surface Coating of Metal Cans (ref. 40 CFR 63.3480 et seq.)
Subpart MMMM	Surface Coating of Miscellaneous Metal Parts and Products (ref. 40 CFR 63.3880 et seq.)
Subpart NNNN	Surface Coating of Large Appliances (ref. 40 CFR 63.4080 et seq.)
Subpart OOOO	Printing, Coating, and Dyeing of Fabrics and Other Textiles (ref. 40 CFR 63.4280 et seq.)
Subpart PPPP	Surface Coating of Plastic Parts and Products (ref. 40 CFR 63.4480 et seq.)
Subpart QQQQ	Surface Coating of Wood Building Products (ref. 40 CFR 63.4680 et seq.)
Subpart RRRR	Surface Coating of Metal Furniture (ref. 40 CFR 63.4880 et seq.)
Subpart SSSS	Surface Coating of Metal Coil (ref. 40 CFR 63.5080 et seq.)
Subpart TTTT	Leather Finishing Operations (ref. 40 CFR 63.5280 et seq.)
Subpart UUUU	Cellulose Products Manufacturing (ref. 40 CFR 63.5480 et seq.)
Subpart VVVV	Boat Manufacturing (ref. 40 CFR 63.5680 et seq.)
Subpart WWWW	Reinforced Plastic Composites Production (ref. 40 CFR 63.5780 et seq.)
Subpart XXXX	Rubber Tire Manufacturing (ref. 40 CFR 63.5980 et seq.)
Subpart YYYY	Stationary Combustion Turbines (ref. 40 CFR 63.6080 et seq.)
Subpart ZZZZ	Stationary Reciprocating Internal Combustion Engines (ref. 40 CFR 63.6580 et seq.) *Title V Sources Only*
Subpart AAAAA	Lime Manufacturing Plants (ref. 40 CFR 63.7080 et seq.)
Subpart BBBBB	Semiconductor Manufacturing (ref. 40 CFR 63.7180 et seq.)
Subpart CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks (ref. 40 CFR 63.7280 et seq.)
Subpart DDDDD	Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (ref. 40 CFR 63.7480 et seq.)
Subpart EEEEE	Iron and Steel Foundries (ref. 40 CFR 63.7680 et seq.)
Subpart FFFFF	Integrated Iron and Steel Manufacturing Facilities (ref. 40 CFR 63.7780 et seq.)
Subpart GGGGG	Site Remediation (ref. 40 CFR 63.7880 et seq.)
Subpart HHHHH	Miscellaneous Coating Manufacturing (ref. 40 CFR 63.7980 et seq.)
Subpart IIIII	Mercury Cell Chlor-Alkali Plants (ref. 40 CFR 63.8180 et seq.)
Subpart JJJJJ	Brick and Structural Clay Products Manufacturing (ref. 40 CFR 63.8380 et seq.)
Subpart KKKKK	Clay Ceramics Manufacturing (ref. 40 CFR 63.8530 et seq.)
Subpart LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.8680 et seq.)
Subpart MMMMM	Flexible Polyurethane Foam Fabrication Operations (ref. 40 CFR 63.8780 et seq.)
Subpart NNNNN	Hydrochloric Acid Production (ref. 40 CFR 63.8980 et seq.)
Subpart PPPPP	Engine Test Cells/Stands (ref. 40 CFR 63.9280 et seq.)
Subpart QQQQQ	Friction Materials Manufacturing Facilities (ref. 40 CFR 63.9480 et seq.)
Subpart RRRRR	Taconite Iron Ore Processing (ref. 40 CFR 63.9580 et seq.)
Subpart SSSSS	Refractory Products Manufacturing (ref. 40 CFR 63.9780 et seq.)
Subpart TTTTT	Primary Magnesium Refining (ref. 40 CFR 63.9880 et seq.)
Subpart UUUUU	Coal and Oil Fired Electric Utility Steam Generating Units (ref. 40 CFR 63.9980 et seq.)
Subpart WWWWW	Hospital Ethylene Oxide Sterilizers (ref. 40 CFR 63.10382 et seq.)
Subpart YYYYY	Area Sources: Electric Arc Furnace Steelmaking Facilities (ref. 40 CFR 63.10680 et seq.)
Subpart ZZZZZ	Iron and Steel Foundries Area Sources (ref. 40 CFR 63.10880 et seq.)
Subpart BBBBBB	Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities (ref. 40 CFR 63.11080 et seq.)
Subpart CCCCCC	Gasoline Dispensing Facilities (ref. 40 CFR 63.11110 et seq.)
Subpart DDDDDD	Polyvinyl Chloride and Copolymers Production Area Sources (ref. 40 CFR 63.11140 et seq.)
Subpart EEEEEE	Primary Copper Smelting Area Sources (ref. 40 CFR 63.11146 et seq.)

Subpart FFFFFF	Secondary Copper Smelting Area Sources (ref. 40 CFR 63.11153 et seq.)
Subpart GGGGGG	Primary Nonferrous Metals Area Sources - Zinc, Cadmium, and Beryllium (ref. 40 CFR 63.11160 et seq.)
Subpart HHHHHH	Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources (ref. 40 CFR 63.11169 et seq.) *Title V Sources Only*
Subpart JJJJJJ	Industrial, Commercial, and Institutional Boilers Area Sources (ref. 40 CFR 63.11193 et seq.) *Title V Sources Only*
Subpart LLLLLL	Acrylic and Modacrylic Fibers Production Area Sources (ref. 40 CFR 63.11393 et seq.)
Subpart MMMMMM	Carbon Black Production Area Sources (ref. 40 CFR 63.11400 et seq.)
Subpart NNNNNN	Chemical Manufacturing Area Sources: Chromium Compounds (ref. 40 CFR 63.11407 et seq.)
Subpart OOOOOO	Flexible Polyurethane Foam Production and Fabrication Area Sources (ref. 40 CFR 63.11414 et seq.)
Subpart PPPPPP	Lead Acid Battery Manufacturing Area Sources (ref. 40 CFR 63.11421 et seq.)
Subpart QQQQQQ	Wood Preserving Area Sources (ref. 40 CFR 63.11428 et seq.)
Subpart RRRRRR	Clay Ceramics Manufacturing Area Sources (ref. 40 CFR 63.11435 et seq.)
Subpart SSSSSS	Glass Manufacturing Area Sources (ref. 40 CFR 63.11448 et seq.)
Subpart TTTTTT	Secondary Nonferrous Metals Processing Area Sources (ref. 40 CFR 63.11462 et seq.)
Subpart VVVVVV	Chemical Manufacturing Area Sources (ref. 40 CFR 63.11494 et seq.)
Subpart WWWWWW	Area Source Standards for Plating and Polishing Operations (ref. 40 CFR 63.11504 et seq.)
Subpart XXXXXX	Area Source Standards for Nine Metal Fabrication and Finishing Source Categories (ref. 40 CFR 63.11514 et seq.) *Title V Sources Only*
Subpart YYYYYY	Area Sources: Ferroalloys Production Facilities (ref. 40 CFR 63.11524 et seq.)
Subpart ZZZZZZ	Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries (ref. 40 CFR 63.11544 et seq.)
Subpart AAAAAAA	Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing (ref. 40 CFR 63.11559 et seq.)
Subpart BBBBBBB	Area Sources: Chemical Preparations Industry (ref. 40 CFR 63.11579 et seq.)
Subpart CCCCCCC	Area Sources: Paints and Allied Products Manufacturing (ref. 40 CFR 63.11599 et seq.)
Subpart DDDDDDD	Area Sources: Prepared Feeds Manufacturing (ref. 40 CFR 63.11619 et seq.)
Subpart EEEEEEE	Gold Mine Ore Processing and Production Area Source Category (ref. 40 CFR 63.11640 et seq.)
Subpart HHHHHHH	Polyvinyl Chloride and Copolymers Production (ref. 40 CFR 63.11860 et seq.)
Appendix A	Test Methods (ref. 40 CFR 63, Appendix A)
Appendix B	Sources Defined for Early Reduction Provisions (ref. 40 CFR 63, Appendix B)
Appendix C	Determination of the Fraction Biodegraded in a Biological Treatment Unit (ref. 40 CFR 63, Appendix C)
Appendix D	Alternative Validation procedure for EPA Waste and Wastewater Methods (ref. 40 CFR 63, Appendix D)
Appendix E	Monitoring Procedures for Nonthoroughly Mixed Open Biological Treatment Systems at Kraft Pulp Mills Under Unsafe Sampling Conditions (ref. 40 CFR 63, Appendix E)

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 16-14-037
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 28, 2016, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-066.

Title of Rule and Other Identifying Information: The department is proposing to amend the following sections in chapter 388-76 WAC, Adult family home minimum licensing requirements: WAC 388-76-1000 Definitions, 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager, 388-76-10463 Medication—Psychopharmacologic, 388-76-10535 Resident rights—Notice of change to services, 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits, 388-76-10650 Medical devices, 388-76-10655 Physical restraints, 388-76-10715 Doors—Ability to open, 388-76-10730 Grab bars and hand rails, 388-76-10825 Space heaters and stoves, 388-76-10845 Emergency drinking water supply, 388-76-10865 Emergency evacuation from adult family home, and 388-76-10895 Emergency evacuation drills—Frequency and participation. The department also is proposing to repeal WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms and 388-76-10880 Emergency evacuation adult family home bedrooms.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 24, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 23, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 9, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-76 WAC to assure compliance with the requirements of SB [SSB] 5600 and to align rule language with the statute. Additionally, revisions to chapter 388-76 WAC are being made to improve the health and safety of residents, to account for changes in technology, and to reflect the language or intent of chapter 70.128 RCW. Other changes are beneficial to adult family home business owners.

The department is also repealing two sections in chapter 388-76 WAC to condense the emergency evacuation WAC.

Reasons Supporting Proposal: This amendment will ensure the department is in compliance with the newly passed law, and that rules are clear so that the rights and safety of residents are protected.

Statutory Authority for Adoption: Chapter 70.128 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: Sherise Baltazar, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation: Candace Goehring, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(c), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

June 22, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment ((~~on~~)) of a vulnerable adult((~~:~~)).

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish((~~; and~~)).

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual ((~~contact~~)) conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. ((~~Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts.~~)) Sexual abuse also includes any sexual ((~~contact~~)) conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means ((~~a~~)) the willful action of inflicting bodily injury or physical mistreatment. Physical

abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding((~~, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately~~)).

(c) **"Mental abuse"** means ((~~any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridicule, intimidating~~)) a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care ((~~who are permitted to reside~~)) permitted in an adult family home at a given time((~~. The capacity includes:~~

~~(1) The number of related children or adults in the home who receive personal or special care and services; plus~~

~~(2) The number of residents the adult family home may admit and retain. The resident capacity. The capacity number listed on the license is the "resident capacity."~~)), including related children or adults in the home and who receive special care.

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means ((~~a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms~~)) application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force on a vulnerable adult in order to calm or comfort him or

her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager ((~~has~~)):

(1) Meets all ((~~of the~~)) minimum qualifications for providers, entity representatives, or resident managers listed in WAC 388-76-10130; and

(2) Has a current valid ((~~first-aid and~~)) cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10463 Medication—Psychopharmacologic. For residents who are given psychopharmacologic medications, the adult family home must ensure:

(1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms; ((~~and~~))

(2) The drug is prescribed by a physician or health care professional with prescriptive authority; ((~~and~~))

(3) The resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed; ((~~and~~))

(4) Changes in medication only occur when the prescriber decides it is medically necessary; and

(5) The resident ((~~has given informed consent for its use~~)) or resident representative is aware the resident is taking the psychopharmacologic medication and its purpose.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident in advance of changes to services, items, activities, or home rules as follows:

(a) In writing; ((~~and~~

~~(b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.~~

~~(2) The home must:~~

~~(a) Provide at least fourteen days advanced notice when there has been a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items or activities.~~

~~(b) Give residents a thirty day notice prior to~~)) (b) Within fourteen days of a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items, or activities;

(c) At least thirty days before the effective date of ((~~the~~)) a change ((~~if the home~~)) that decreases the scope of care, services, or activities due to circumstances beyond the home's control; and

(((~~(c) Give residents a~~)) (d) At least ninety ((~~day notice prior to~~)) days before the effective date ((~~of the decrease if~~)) the home voluntarily decreases the scope of care, services, or activities the home provides, or if the change ((~~results~~)) will result in the discharge of at least one resident.

(((~~(3)~~))) (2) The home is not required to ((~~give notice:~~

~~(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and~~

~~(b) If the resident is provided different or additional services, items or activities from the home which do not result in an additional cost to the resident~~)) notify the resident if the home provides him or her different or additional services, items, or activities that do not result in an additional cost to the resident.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits. (1) The adult family home must complete the department's disclosure of charges form((~~s as provided by the department~~)) and provide a copy ((~~of it~~)) to each resident ((~~who is~~)) admitted to the home.

(2) If the adult family home ((~~chooses to provide its own disclosure of fees and charges to residents in addition to the form required by the department, the home:~~

~~(a) Must give full disclosure in writing;~~

~~(b) In a language the resident understands;~~

~~(c) Prior to the receipt of any funds~~)) requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands prior to its receipt of any funds.

(3) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, ((~~or is~~)) transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that ((~~will be refunded~~)) the home will refund to the resident if the resident leaves the home.

(4) The home must ensure that the ((~~receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home~~)) resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.

(5) If the home does not provide ((~~these~~)) the disclosures in subsection 3 to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

(6) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges ((~~already~~)) paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home ((~~in spite~~)) regardless of any minimum stay policy or discharge notice requirements; ((~~except that~~))

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges((~~:~~)), unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) ((~~May~~)) Must not require the resident to obtain a refund from a placement agency or person.

(7) The adult family home ((~~may~~)) must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(8) ((~~All~~)) The adult family home((~~s covered under this section are required to refund any and all refunds due the~~)) must provide the resident with any and all refunds due to him or her within thirty days from the resident's date of discharge from the home.

(9) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(10) ((~~If~~)) The home ((~~requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are~~)) must ensure that any resident admission agreement is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10650 Medical devices. ((~~Before the adult family home uses medical devices for any resident, the home must:~~

~~(1) Review the resident assessment to determine the resident's need for and use of a medical device;~~

~~(2) Ensure the resident negotiated care plan includes the resident use of a medical device or devices; and~~

~~(3) Provide the resident and family with enough information about the significance and level of the safety risk of use of the device to enable them to make an informed decision about whether or not to use the device~~)) (1) The adult family home must not use a medical device with a known safety risk as a restraint or for staff convenience.

(2) Before a medical device is used by a resident, the home must:

(a) Review the resident's assessment to identify the resident's need and ability to safely use the medical device;

(b) Provide the resident and his or her family or legal representative with information about the device's benefits and safety risks to enable them to make an informed decision about whether to use the device; and

(c) Ensure the resident's negotiated care plan includes use of the medical device.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10655 Physical and mechanical restraints. The adult family home must ensure:

(1) Each resident's right to be free from physical and mechanical restraints used for discipline or convenience;

(2) Prior to the use of ((~~a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and~~

~~(3) That~~)) physical or mechanical restraints, the home has tried less restrictive alternatives and documented them in the resident's negotiated care plan;

(3) The physical or mechanical restraints ((~~used~~)) have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) ((~~That~~)) If physical or mechanical restraints are used to treat a resident's medical symptoms ((~~that~~)), the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician((~~; and~~)).

(((~~(d)~~))) (5) For the purposes of this ((~~subsection, immediate supervised~~)) section, "immediately supervised" means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; and

(3) One door leading to the outside ((~~must be~~)) is designated as the primary egress and((~~, effective~~)) homes licensed after January 1, 2016((~~, must~~)) have a lever door handle and hardware that allows residents to exit((~~, even~~)) when the door is locked((~~, and also allows~~)) and reentry ((~~into the home~~))

without a key, tool, or special knowledge or effort by residents.

(4) Other external exit doors not designated as the primary egress, must open without any special skills or knowledge and they ((~~must~~)) remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident.

(5) All internal and external doors ((~~must~~)) comply with local jurisdictional requirements as well as the building code requirements ((~~as contained~~)) in chapter 51-51 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10730 Grab bars and hand rails. (1) ((~~The adult family home must install grab bars or hand rails to meet the needs of each resident.~~

~~(2) At a minimum, grab bars must be installed and securely fastened in:~~

~~(a) Bathing~~)) Homes licensed before October 1, 2016, must at a minimum install:

(a) Grab bars in bathing facilities such as tubs and showers; ((~~and~~))

(b) Grab bars next to toilets, if needed by any resident((~~:~~

~~(3) If needed by any resident, hand rails must be installed and conveniently located on:~~

~~(a) A step or steps; and~~

~~(b) Ramps~~));

(c) Handrails on a step or steps; and

(d) Handrails on ramps.

(2) Homes and bathroom additions licensed after October 1, 2016 must install grab bars securely fastened in accordance with WAC 51-51-0325 at the following locations:

(a) Bathing facilities such as tubs and showers; and

(b) Each side of any toilet used by residents.

(3) Homes licensed after October 1, 2016 must install handrails on each side of the following:

(a) Step or steps; and

(b) Ramps used by residents.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10825 Space heaters, fireplaces, and stoves. ((~~The adult family home must ensure:~~

~~(1) The following space heaters are not used in a home except during a power outage and the portable heater is only safe source of heat:~~

~~(a) Oil;~~

~~(b) Gas;~~

~~(c) Kerosene; and~~

~~(d) Electric.~~

~~(2) Stoves and heaters do not block residents, staff or household members from escaping~~)) (1) The adult family home must not use oil, gas, kerosene, or electric space heaters not equipped with automatic safety features, except during a power outage if it is the only safe source of heat.

(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.

(3) The adult family home must ensure that fireplaces and stoves have a stable barrier that prevents accidental resident contact. No barrier is required for an electric fireplace with glass that is not hot to the touch.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

(1) Will last for a minimum of seventy-two hours for ((~~each~~)) every resident ((~~and each~~)), household member, and caregiving staff;

(2) Is at least three gallons for ((~~each~~)) every resident ((~~and each~~)), household member, and caregiving staff;

(3) Is stored in well-sealed food grade or glass containers;

(4) Is chlorinated or commercially-bottled;

(5) Is replaced every six months, unless ((~~the commercial water bottle is labeled for a longer expiration date~~)) it is sealed and commercially-bottled; and

(6) Is stored in a cool, dry location away from direct sunlight.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10865 ((~~Emergency~~)) Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all ((~~people living in the home:~~

~~(1) From the home to a safe location outside the home; and~~

~~(2) In five minutes or less~~)) residents from the home to a safe location outside the home in five minutes or less.

(2) The home must ensure that residents who require assistance are able to evacuate the home as follows:

(a) Through the primary egress door;

(b) Via a path from the resident's bedroom that does not go through other bedrooms; and

(c) Without the resident having to use any of the following:

(i) Stairs;

(ii) Elevators;

(iii) Chairlift; or

(iv) Platform lift.

(3) Ramps for residents to enter, exit, or evacuate on homes licensed after October 1, 2016 must comply with WAC 51-51-0325.

(4) Homes that serve residents who are hearing impaired and not able to hear the fire alarm warning must install visual fire alarms.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. The adult family home must ensure:

(1) Emergency evacuation drills occur at least every two months; and

(2) All residents take part in together and at the same time at least one emergency evacuation drill each calendar year ((~~involving~~)) that includes full evacuation from the home to a safe location.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10820	Resident evacuation capabilities and location of resident bedrooms.
WAC 388-76-10880	Emergency evacuation adult family home bedrooms.

WSR 16-15-031
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed July 13, 2016, 11:33 a.m.]

Supplemental Notice to WSR 16-07-153.

Preproposal statement of inquiry was filed as WSR 14-21-2014 [14-21-182].

Title of Rule and Other Identifying Information: WAC 314-12-215 Alcohol impact areas—Definition—Guidelines.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: September 7, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by August 24, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of a stakeholder request. Clarification of requirements for an alcohol impact area are requested.

Reasons Supporting Proposal: Alcohol impact areas are becoming more popular with local jurisdictions. Clarification of requirements will ensure that all stakeholders understand what is required for the board to recognize an alcohol impact area and to continue to keep the alcohol impact area in force.

Statutory Authority for Adoption: RCW 66.08.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, 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. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required.

July 13, 2016
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 10-19-065, filed 9/15/10, effective 10/16/10)

WAC 314-12-215 Alcohol impact areas—Definition—Guidelines. (1) **What is an alcohol impact area((~~, and how is it different~~))?**

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire ((~~territory~~)) geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, ((~~other similar records,~~)) community group petitions, public testimony or testimony by current or former chronic public ((~~inebriants;~~

(~~iii~~))) inebriates.

(d) **Minimum requirements for an alcohol impact area petition packet:**

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section)((~~;~~

~~(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and~~

(~~v~~))). The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(3) **What conditions or restrictions may the board recognize for an alcohol impact area?**

(a) Restrictions may include, but are not limited to:

(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; ((~~or~~)) and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a list of products that will be banned in alcohol impact areas. The list can be found on the WSLCB web site. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. (((~~c~~))) Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public ((~~inebriants~~)) inebriates; litter pickup; or other statistically documented evidence ((~~that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity.~~

~~(d) Restricted beer and wine products must have minimum alcohol content of five and seven-tenths percent by volume and twelve percent by volume, respectively.~~

~~(e) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board-recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category such as alcoholic energy drinks) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board,~~

~~in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (c) of this subsection~~)).

(((~~f~~))) (c) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

(4) **What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?**

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily ((~~discontinuing to sell a~~)) discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

(5) **What will the board do once it recognizes an alcohol impact area?**

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) ((~~No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.~~

(~~c~~))) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

(6) **What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?**

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a sixty-day comment period.

(b) For renewals, the board will notify a local authority at least ninety calendar days before a current license expires. The same requirements in (a)(i) and (ii) of this subsection apply to the ninety-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

(7) **When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?**

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than thirty calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation ((~~(see~~)) as contained in subsections (2) and (3) of this section((~~)~~)).

(d) Prohibition of a new product added to an existing prohibited products list takes effect no ((~~less~~)) sooner than thirty calendar days following the board's recognition of a modified prohibited products list.

(8) **Reporting requirements and five-year assessments.**

(a) A year after the implementation of the alcohol impact area a local authority shall submit ((~~annual~~)) a report((~~s~~)) to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report((~~s are~~)) is due no later than sixty calendar days following ((~~each anniversary of the board's recognition of an~~)) the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, tenth,

fifteenth, et cetera, anniversary of the board's recognition of ((~~an~~)) the alcohol impact area. The five-year assessment process is as follows:

(i) Within ((~~ten~~)) twenty calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, ((~~annual~~)) report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one twenty calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial twenty-day deadline.

(iii) The board will complete an assessment within sixty calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties((~~; and~~

~~(ii) Each annual report submitted during a five-year period~~)).

An assessment ((~~shall~~)) may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation((~~,~~)) or illegal activity associated with liquor sales or consumption((~~,~~)) within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will ((~~reduce~~)) affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one twenty-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the twenty-day deadline.

WSR 16-15-032
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed July 13, 2016, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-109.

Title of Rule and Other Identifying Information: WAC 314-02-103 What is a wine retailer reseller endorsement?, 314-05-020 What is a special occasion license?, 314-24-240 Domestic wineries at special occasion licensed events, 314-38-020 Permits—Fees established, 314-38-080 Class 18 special winery permit, 314-38-090 Class 19 special distillery permit, 314-38-095 Class 20 special brewery permit, and 314-38-100 Accommodation sale permit.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: September 7, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by August 24, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to implement 2016 legislation.

Reasons Supporting Proposal: Licensees need to know what requirements they must meet for permits and privileges passed in the 2016 legislative session.

Statutory Authority for Adoption: RCW 66.08.030, 66.20.010.

Statute Being Implemented: RCW 66.20.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, 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. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required.

July 13, 2016
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is

issued to the holder of a grocery store liquor license or the holder of a beer and/or wine specialty shop license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters. Single sales to an on-premises licensee are limited to one per day.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(((~~(4)~~))) (5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(((~~(5)~~))) (6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-05-020 What is a special occasion license? (1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; ((~~and~~))

(b) Spirits, beer, and wine in original, unopened containers for off-premises consumption; and

(c) Wine in original, unopened containers for on-premises consumption if permission is obtained from the WSLCB prior to the event.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is $60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.

NEW SECTION

WAC 314-24-245 Domestic wineries at special occasion licensed events. (1) A domestic winery may take orders and accept payment for product of its own production from consumers at a special occasion event, to be delivered at a later date from one of its authorized locations.

(2) A domestic winery must be invited and/or authorized by the special occasion licensee in order to attend the special occasion event in this capacity.

(3) In order for the winery to exercise this privilege, the special occasion licensee must be providing the winery's product at the event for on-premises consumption.

(4) The special occasion licensee is the only licensee allowed to sell wine to be consumed on the premises.

(5) The winery is not allowed to give free tastings of wine of their own production to consumers.

(6) The winery shall notify the board or its designee of the name of the special occasion licensee, date, time, place, and location of the event.

AMENDATORY SECTION (Amending WSR 84-14-028, filed 6/27/84)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(12).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(15).

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-080 Class 18 special winery permit. (1) The special winery permit is for domestic wineries.

(2) A special winery permit allows a manufacturer of wine to ((~~have~~)) be present at a private event not open to the general public at a specific place and date for the purpose of tasting wine and selling wine of its own production for off-premises consumption.

(3) ((~~The activities at the event are limited to the activities allowed on the winery premises.~~

~~(4)~~)) The winery must obtain the special permit by submitting an application for a class 18 special winery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

((~~(5)~~)) (4) The winery is limited to twelve events per calendar year.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-38-090 Class 19 special distillery permit. (1) A special distillery/craft distillery permit is for Washington distillers only.

(2) A special distillery/craft distillery permit allows a manufacturer of spirits to ((~~have~~)) be present at a private event not open to the general public at a specific place and date for the purpose of tasting spirits and selling spirits of its own production for off-premises consumption.

(3) The activities at the event are limited to the activities allowed on the distillery/craft distillery premises.

(4) The distillery or craft distillery must obtain the special permit by submitting an application for a class 19 special distillery/craft distillery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(5) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-095 Class 20 special brewery permit. (1) A special brewery/microbrewery permit is for Washington brewers only.

(2) A special brewery/microbrewery permit allows a manufacturer of beer to be present at a private event not open to the general public at a specific place and date for the purpose of tasting beer and selling beer of its own production for off-premises consumption.

(3) The brewery or microbrewery must obtain the special permit by submitting an application for a class 20 special brewery/microbrewery permit to the board with a ten dollar permit fee.

(a) The application must be submitted to the board at least ten days prior to the event.

(b) The special permit must be posted at the event.

(4) The licensee is limited to twelve events per calendar year.

NEW SECTION

WAC 314-38-100 Accommodation sale permit. (1) An accommodation sale permit is for an individual or business to sell a private collection of wine or spirits to another individual or business.

(2) The seller must complete an application for accommodation sale permit and submit with a fee of twenty-five dollars to the WSLCB.

(3) Once the WSLCB verifies the information on the application, a permit for the sale will be issued to the seller.

(4) The seller must wait at least five business days after receiving the permit to release the wine and/or spirits to the buyer.

(5) Within twenty calendar days of the sale, the seller must complete an accommodation sale inventory report and submit it to the WSLCB.

(6) The following are definitions for the purpose of this section:

(a) "Accommodation sale" means the sale of a private collection of wine or spirits to an individual or business. Both the seller and the buyer must be located in Washington state.

(b) "Buyer" means the individual or business buying a private collection of wine or spirits. A buyer may be a liquor licensee.

(c) "Private collection" means a privately owned collection of wine or spirits. There is no minimum or maximum quantity to be considered a collection.

(d) "Seller" means the individual or business selling a private collection of wine or spirits. The seller cannot be a liquor licensee.

WSR 16-15-033
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed July 13, 2016, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-027.

Title of Rule and Other Identifying Information: WAC 314-02-130 What types of changes to a licensed premises require board approval?

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: September 7, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by August 24, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to create an exception, on a case-by-case basis to the outside service requirements.

Reasons Supporting Proposal: This rule making is needed to clarify requirements for outside liquor service at a liquor licensed premises.

Statutory Authority for Adoption: RCW 66.08.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, 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. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required.

July 13, 2016
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 15-07-035, filed 3/11/15, effective 4/11/15)

WAC 314-02-130 What types of changes to a licensed premises require board approval? The following changes to a licensed premises require prior board approval, by submitting a form provided by the board's licensing and regulation division:

Type of alteration	Approval process and timeline
(1) • Excluding persons under twenty-one years of age from a spirits, beer, and wine restaurant or a spirits, beer, and wine nightclub; • Excluding persons under twenty-one years of age from the dining area of a beer and/or wine restaurant; • Reclassifying a lounge as open to persons under twenty-one years of age; • Extending the location of alcohol service, such as a beer garden or patio/deck service (areas must be enclosed with a barrier a minimum of forty-two inches in height); • Initiating room service in a hotel or motel when the restaurant is not connected to the hotel or motel;	(a) The board's licensing and regulation division will make initial contact on the request for alteration within five business days. (b) The licensee may begin liquor service in conjunction with the alteration as soon as approval is received. (c) Board approval will be based on the alteration meeting the requirements outlined in this title.
(2) • Any alteration that affects the size of a premises' customer service area.	(a) The board's licensing and regulation division will make an initial response on the licensee's request for alteration within five business days. (b) The licensee must contact their local liquor control agent when the alteration is completed. (c) The licensee may begin liquor service in conjunction with the alteration after the completed alteration is inspected by the liquor control agent. (d) Board approval will be based on the alteration meeting the requirements outlined in this title.

(3) For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a forty-two inch barrier or permanent demarcation of the designated alcohol serving areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed at a minimum of ten feet apart.

(4) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(5) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point.

(6) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) The board may grant limited exceptions to the required forty-two inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

WSR 16-15-034
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed July 13, 2016, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-026.

Title of Rule and Other Identifying Information: WAC 314-23-085 What types of discounts are not allowed?

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: September 7, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by August 24, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is needed to clarify what discounts are and are not allowed between distributors and retailers.

Reasons Supporting Proposal: There is confusion among liquor licensees on this issue.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.28.170.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, 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. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required.

July 13, 2016
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 15-19-130, filed 9/21/15, effective 10/22/15)

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

(2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment ((~~or single invoice~~)).

(3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. ((~~The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order unless the order is delivered to multiple liquor licensed locations owned and operated by the same liquor licensed entity.~~))

WSR 16-15-036
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed July 13, 2016, 1:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-001 [16-09-120].

Title of Rule and Other Identifying Information: WAC 314-42-110 Brief adjudicative proceedings, and 314-55-089 What are the tax and reporting requirements for marijuana licensees?

Hearing Location(s): Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on August 24, 2016, at 10:00 a.m.

Date of Intended Adoption: On or after September 7, 2016.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, e-

mail rules@lcb.wa.gov, fax (360) 664-9689, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Joanna Eide by August 17, 2016, (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are proposed to WAC 314-55-089 to add provisions to require marijuana excise tax payments by electronic payment, check, cashier's check, or money order. The changes also provide provisions on when payments are deemed received. A waiver process is also established to allow those to apply for a waiver from the payment requirements based on good cause. If a licensee fails to apply for a waiver or is denied a waiver, they may be assessed a ten percent penalty should the licensee continue to tender marijuana excise tax payments in cash. If a licensee is denied a waiver, they have the right to appeal the decision under the Administrative Procedure Act, chapter 34.05 RCW. WAC 314-55-110 is amended to allow appeals of waiver denials to proceed as brief adjudicative proceedings as allowed under RCW 34.05.482 through 34.05.494.

Reasons Supporting Proposal: Rule changes are necessary to implement the budget proviso related electronic payment of the marijuana excise tax included by the legislature in the 2016 supplemental budget. Rules are needed to provide parameters for the electronic payments and other allowable methods of payment and to provide a process for obtaining a waiver for electronic payments. WSLCB also proposes amending rules to allow appeals of a waiver denial to proceed as brief adjudicative proceedings under the Administrative Procedure Act (chapter 34.05 RCW). These rule amendments and payment requirements will promote efficiency and public safety by decreasing the amount of cash payments transported to WSLCB for payment of marijuana excise taxes.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535, and SL 2016 c 36 (2ESHB 2376).

Statute Being Implemented: RCW 69.50.342, 69.50.345, 69.50.535, and SL 2016 c 36 (2ESHB 2376).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Implementation and Enforcement: WSLCB Budget and Finance, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement Marijuana Excise Tax Electronic Payment Rules

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed amendments to WAC 314-55-089. Because the amendments to WAC 314-42-110 Brief adjudicative proceedings, do not impose new requirements on marijuana businesses and instead address how an administrative proceeding will occur should a person appeal the denial or a waiver, this SBEIS does not address the proposed changes to that rule.

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees?

1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: Licensed marijuana retailers (retailer) must pay monthly excise taxes to WSLCB pursuant to RCW 69.50.535. This rule making involves proposed new language in WAC 314-55-089 to require payments of the marijuana excise tax by electronic payment or electronic funds transfer (EFT), check, cashier's check, or money order unless a retailer applies for a waiver to continue paying excise taxes in cash. A waiver will be granted for good cause shown. "Good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the electronic payment requirement and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the payment mechanisms provided in the rule.

If a retailer does not apply for a waiver or is denied a waiver and continues to pay the monthly marijuana excise tax in cash, a ten percent penalty may be imposed.

The excise tax electronic payment requirements in the proposed rule, including the ten percent penalty, are similar to requirements in the Washington state department of revenue's (DOR) laws, rules, and procedures. DOR also collects tax payments from marijuana licensees under similar conditions.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: The electronic payment and check requirements do carry with them a requirement that retailers hold a bank or credit union account. The cashier's check or money order payment options do not necessarily require the retailer to hold an account at a financial institution.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: The costs of compliance will depend on decisions made by retailers. If retailers choose to obtain an account at a financial institution due to the new requirements, costs may or may not be higher than those retailers who do not choose to obtain a bank account and pay excise taxes by other means. Payment of the excise tax may be made by electronic payment, check, cashier's check, or money order. While an account with a financial institution is likely required to pay excise taxes by electronic payment or check, an account is not necessarily required to make payment by a cashier's check or money order. Also, because each bank or credit union has differing fees and each business is different as far as size, volume of transactions, and business practices, costs will vary from retailer to retailer. These costs are mitigated by the option for a retailer to apply for a waiver to continue paying the marijuana excise tax in cash for good cause shown.

No additional equipment or supplies are required by the proposed new rule language. There may be increased administrative costs should a retailer choose to open an account at a financial institution if they had not done so previously, such

as transportation costs for deposits, etc. However, this would be a decision up to the retailer as other payment options are available that do not necessarily require a bank account.

4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue? The new requirements will not impact sales or revenue generated from those sales. Where the new requirements may impact revenue is by increased costs for holding a bank account should they choose to go that route, which would reduce retailer profit margins if changes are not made to absorb the costs. Again, payment of the excise tax may be done by electronic payment, check, cashier's check, or money order, and a bank account is not necessarily required to make payment by a cashier's check or money order.

5. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

Virtually all marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to WSLCB, though WSCLB does collect data on collection on the value of marijuana at retail and wholesale and sales information. The average price per gram as of April 30, 2016, was $8.73/gram at retail and $3.14/gram at wholesale. Sales and excise tax payments data can assist with estimating profits, however, each business is different and costs are not known so there is not enough information for WSLCB to determine profit margins. The total amount of sales by retailers from July 1, 2014, through June 30, 2015, (fiscal year 2015) including excise taxes was $44.9 million. The total amount of sales by retailers from July 1, 2015, to June 30, 2016, (fiscal year 2016) including excise taxes was $972.7 million, with excise taxes making up $185.7 million of that amount. As of July 5, 2016, two hundred sixty-seven retail stores are reporting sales. While WSLCB appreciates that each retailer is unique and varies in size, the costs of maintaining an account and making electronic payments compared to the sales figures, coupled with the alternative payment options, waiver opportunity, and risks to retailer and public safety, suggests that the costs are reasonable.

WSLCB has received information from retailers that aids in giving examples of costs associated with electronic payment, which is most associated with option c above, "Cost per one hundred dollars of sales." Some have responded that it would cost approximately $200 per month to maintain an account, and another retailer stated that it would cost over $500 in fees to make an approximately $175,000 excise tax payment in electronic funds transfer.

Each financial institution varies as far as application costs for obtaining a bank account and there is little data openly available for these figures. This is especially true since marijuana businesses are unique. While banking resources are not as available to marijuana businesses on the same level as other small businesses, there are resources available and WSCLB continues to work for more options. Many financial institutions charge monthly fees, and may also charge fees for large transfers of funds. Examples of financial institution fees for banking services are included below (fees may be higher for marijuana licensees).

Numerica Credit Union https://www.numericacu.com/

- Application Fee: Unknown
- Monthly Fee: $10 per month or meet minimum daily balance ($5,000 - $10,000 average daily balance)
- Deposit/Withdrawal Limits: 500 items; additional items subject to fee
- Cashier's Check Fee: $2.00 each
- Money Order Fee: $2.00 each

Salal Credit Union https://www.salalcu.org/

- Application Fee: Unknown
- Monthly Fee: $11-$19 per month
- Deposit/Withdrawal Limits: 100 items; additional items subject to fee
- Cashier's Check Fee: $5.00 each
- Money Order Fee: $3.00

Timberland Bank https://www.timberlandbank.com/

- Application Fee: Unknown
- Monthly Fee: $8.00
- Deposit/Withdrawal Limit: Unknown; (deposit fee: $0.15/$0.06 per item)
- Cashier Check Fee: $5.00
- Money Order Fee: $3.00

Twin City Bank http://www.twincitybank.com/*

- Application Fee: Unknown
- Monthly Fee: $10
- Deposit/Withdrawal Limit: 150 deposit/50 checks; additional items subject to fee
- Cashier Check Fee: $5.00
- Money Order Fee: $4.00

*High Volume Checking for Business: If your business requires a particularly high volume of account activity or has other unusual requirements such as handling large amounts of coin or currency, Twin City Bank offers individual account analysis. Account activity is measured, valued and compared to the value of the collected funds on deposit. A service fee is generated only if collected funds value does not offset account activity costs. **

O Bee Credit Union https://www.obee.com/Home**

- Application Fee: $750 (additional $350 per LCB license number)
- Monthly Fee: $200
- Deposit/Withdrawal Limit: Unknown
- Cashier Check Fee: $2.00
- Money Order Fee: Unknown

**These fees are specific to Marijuana Licensees.

WSLCB is also looking into other electronic payment options, including what is already available for licensees and

companies such as PayQwick LLC http://www.payqwick.com/, and will continue to assess fees associated with maintining [maintaining] accounts and electronic payments as the rule-making process continues.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: WSLCB sought to reduce costs on licensees through proactive communication with retailers and relationship building with financial institutions. WSLCB continues to work with financial institutions to increase the availability of banking options for marijuana licensees in general. Understanding the challenges associated with obtaining banking services for some retailers, WSLCB established a waiver process similar to DOR's that can be applied for to continue making payments in cash for good cause shown.

The additional costs associated with complying with the new requirements are also minimized on the group of retailers as a whole as many of them are already making excise tax payments through means other than cash. Additionally, WSLCB has been conducting outreach efforts to encourage noncash payments. The number of cash payments have decreased 22.4% from January 2016 to June 2016. In January, WSLCB had seventy-one retailers pay excise taxes in cash compared to fifty-eight in June. WSLCB has also seen an increase in electronic payments, receiving one hundred forty electronic excise tax payments in June 2016 as compared to eighty-two in January 2016.

Requiring the payment of excise taxes through means other than cash payment is directly aimed at reducing safety risks to marijuana retailers. Discouraging retailers from keeping large amounts of cash on-sire [on-site], rather than in a bank account, is a security risk and carries public safety risks as well. Increased costs on businesses to reduce these risks are necessary and comparatively reasonable to the risks involved.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rule-making process. Since WSLCB already imposed the requirement through emergency rules that became effective July 1, 2016, marijuana businesses are already aware of the requirements and have commented on the proposed changes.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed marijuana retailers will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: It is unlikely that the changes in this proposal will result in the loss of jobs, but this is dependent on many factors, including internal decisions made by businesses which cannot be foreseen by WSLCB.

A copy of the statement may be obtained by contacting Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622, fax (360) 664-9689, e-mail Joanna.Eide@lcb.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.328.

July 13, 2016
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 14-12-102, filed 6/4/14, effective 7/5/14)

WAC 314-42-110 Brief adjudicative proceedings. The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;

(2) Liquor license denials per WAC 314-07-065(2);

(3) Liquor license denials per WAC 314-07-040;

(4) Special occasion license application denials per WAC 314-07-040;

(5) Special occasion license application denials per WAC 314-07-065(7);

(6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;

(7) MAST provider denials or revocations per WAC 314-17-070;

(8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;

(9) One-time event denials for private clubs per WAC 314-40-080;

(10) Banquet permit denials per WAC 314-18-030;

(11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);

(12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);

(13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;

(14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;

(15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;

(16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055;

(17) Tobacco license denials per WAC 314-33-005;

(18) Marijuana license denials per WAC 314-55-050(2);

(19) Marijuana license denials per WAC 314-55-050(4);

(20) Marijuana license denials per WAC 314-55-050(8);

(21) Marijuana license denials per WAC 314-55-050(10);

(22) Marijuana license suspensions per WAC 314-55-050(11);

(23) Marijuana license denials per WAC 314-55-050(12); ((~~and~~))

(24) Marijuana license denials per WAC 314-55-050(13); and

(25) Marijuana excise tax payment waiver denials per WAC 314-55-089.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be:

(a) On a form or electronic system designated by the WSLCB;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each marijuana license held; and

(e) All records must be maintained and available for review for a three-year period on licensed premises (see WAC 314-55-087).

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(4) **Marijuana retailer's licensees:**

(a) On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

(5) **Payment methods:** Marijuana excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit marijuana excise tax payments to the board by one of the following means:

(a) By mail to WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504;

(b) By paying through online access through the WSLCB traceability system; or

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the WSLCB's receiving account. All other payments transmitted to the WSLCB under this section by United States mail will be deemed received on the date shown by the post office cancellation mark stamped on the envelope containing the payment.

(7) The WSLCB may waive the means of payment requirements as provided in subsection (5) of this section for any licensee for good cause shown. For the purposes of this section, "good cause" means the inability of a licensee to comply with the payment requirements of this section because:

(a) The licensee demonstrates it does not have and cannot obtain a bank or credit union account or another means by which to comply with the requirements of subsection (5) of this section and cannot obtain a cashier's check or money order; or

(b) Some other circumstance or condition exists that, in the WSLCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the marijuana excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a ten percent penalty.

(9) If a licensee is denied a waiver and requests an adjudicative proceeding to contest the denial, a brief adjudicative proceeding will be conducted as provided under RCW 34.05.482 through 34.05.494.

(10) For the purposes of this section, "electronic payment" or "electronic funds transfer" means any transfer of funds, other than a transaction originated or accomplished by conventional check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit a checking or other deposit account. "Electronic funds transfer" includes payments made by electronic check (e-check).

WSR 16-15-053
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 15, 2016, 11:34 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-907-0302 Hospital pharmacy associated clinics—Fees and renewal cycle (new), proposing new fees to cover the costs of regulation and inspection of hospital pharmacy licenses that include individual practitioner offices and multi-practitioner clinics owned, operated or under the common control of a hospital. The proposed rule is needed to implement SSB 6558 (chapter 118, Laws of 2016). The pharmacy

quality assurance commission (commission) is adopting licensing rules for this new subcategory of hospital pharmacy licenses under a separate rule making.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road S.E., Room 158, Tumwater, WA 98501, on August 23, 2016, at 1:00 p.m.

Date of Intended Adoption: August 30, 2016.

Submit Written Comments to: Sherry Thomas, Policy Coordinator, Washington State Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail https://fortress.wa.gov/doh/policyreview, fax (360) 236-4626, by August 23, 2016.

Assistance for Persons with Disabilities: Contact Sherry Thomas by August 9, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will allow the department of health (department) and commission to cover credentialing, inspection and other costs of regulation for hospital pharmacy associated clinics (HPAC) that receive drugs transferred from the parent hospital pharmacy. The rule creates two fee categories: One for clinics that receive drugs but do not perform compounding; and one for clinics that receive drugs and perform sterile or nonsterile compounding. The categories and fee amounts were developed in coordination with the commission and affected stakeholders.

Reasons Supporting Proposal: The proposed rule sets the parent hospital pharmacy licensing fees for HPACs that are necessary to implement SSB 6558. RCW 43.70.250 requires the department to set license fees at sufficient levels to defray the costs of the licensing program. The proposed fees cover the estimated costs of administering the new credentials based on the level of work required for each category of HPAC, which includes inspection, discipline, and credentialing costs. The department plans to monitor revenues and expenditures for this new license subcategory to determine if future adjustments are needed.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: SSB 6558 (chapter 118, Laws of 2016).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98503, (360) 236-4692; Implementation and Enforcement: Steven Saxe, 111 Israel Road S.E., Tumwater, WA 98503, (360) 236-2903.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 15, 2016
John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-907-0302 Hospital pharmacy associated clinics licensing periods and fees—Fees and renewal cycle. (1) Parent hospital pharmacy licenses with one or more hospital pharmacy associated clinics (HPAC) expire on June 1st of each year.

(2) A parent hospital pharmacy must submit fees for HPACs in addition to fees set in WAC 246-907-030(4). HPAC fees are due annually, except as provided under subsection (3)(d) of this section.

(3) A parent hospital pharmacy must submit the following nonrefundable fees based on category and number of HPACs as defined in WAC 246-873A-020(3) added to the parent hospital pharmacy license.

(a) **Category 1 HPAC.** A parent hospital pharmacy must submit the Category 1 HPAC fee according to the number of Category 1 HPACs under the parent hospital pharmacy license.

HPAC tier	Number of Category 1 HPACs under parent hospital pharmacy license	Total fee
A	1-10	$640.00
B	11-50	$1,600.00
C	51-100	$2,240.00
D	Over 100	$2,880.00

(b) **Category 2 HPAC.** A parent hospital pharmacy must submit the Category 2 HPAC fee for each Category 2 HPAC under the parent hospital pharmacy license.

Category 2 HPAC fee	$540.00

(c) The department charges a processing fee of fifty-five dollars for an amended license to change the number of HPACs.

(d) If at any time a parent hospital pharmacy submits an addendum increasing the number of HPACs on the parent hospital pharmacy license, which changes the applicable HPAC tier to a higher fee amount, the parent hospital pharmacy shall submit the difference in fees with the addendum.

(e) The department will not refund fees when a tier reduction occurs between renewal periods.

WSR 16-15-054
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed July 15, 2016, 12:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-096.

Title of Rule and Other Identifying Information: WAC 415-106-010 Public safety employees' retirement system (PSERS) definitions.

Hearing Location(s): Department of Retirement Systems, 6835 Capitol Boulevard S.E., Conference Room 115, Tumwater, WA 98502, on Tuesday, August 23, 2016, at 9:00 a.m.

Date of Intended Adoption: August 23, 2016.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, e-mail jilenes@drs.wa.gov, fax (360) 753-1090, by August 22, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel by August 20, 2016, TTY (866) 377-8895 or (360) 586-5450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment will clarify how the department interprets statutory provisions for determining eligibility for membership in PSERS.

Statutory Authority for Adoption: RCW 41.50.050(5).

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Jacob White, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219; Implementation: Seth Miller, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7304.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. The department of retirement systems is not listed in RCW 34.05.328 as required to prepare a cost-benefit analysis.

July 15, 2016
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-010 Definitions. The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(14).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.

(((~~(3)~~))) (5) **Full-time employee** means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.

(((~~(4)~~))) (6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

(((~~(5)~~))) (7) **PERS** means the public employees' retirement system.

(((~~(6)~~))) (8) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility of a position may be considered the primary responsibility because:

(a) The position exists to perform that function; or

(b) There are a limited number of employees available who could perform that function; or

(c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

(9) **PSERS** means the public safety employees' retirement system.

(((~~(7)~~))) (10) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).

(((~~(8)~~))) (11) **SERS** means the school employees' retirement system.

(((~~(9)~~))) (12) **TRS** means the teachers' retirement system.

(((~~(10)~~))) (13) **WSPRS** means the Washington state patrol retirement system.

(((~~(11) **County corrections department** means any subsection or unit of a county employing correctional employees.~~

~~(12) **City corrections department** means any subsection or unit of a city employing correctional employees.~~))

WSR 16-15-055
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 15, 2016, 2:19 p.m.]

Continuance of WSR 16-09-077.

Preproposal statement of inquiry was filed as WSR 14-22-107.

Title of Rule and Other Identifying Information: The department proposes new WAC 220-55-165 to establish a reduced rate annual fish Washington license, and the ability for anglers to upgrade to a combination or the new fish Washington license.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia, WA 98504, on August 5-6, 2016, at 8:30 a.m.

Date of Intended Adoption: On or after August 7, 2016.

Submit Written Comments to: WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 6, 2016.

Assistance for Persons with Disabilities: Contact Tami Linninger [Lininger] by August 1, 2016, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The fish and wildlife commission will hold a public hearing at the August 5-6 commission meeting for the proposed amendments to WAC 220-55-165 regarding the combination license or the new fish Washington license. This hearing has been continued from the previously scheduled hearing on June 10-11, 2016. At the

June 10-11 hearing, the public and stakeholders were notified the hearing on this rule would be continued to a later date.

Statutory Authority for Adoption: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.32.470, 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

July 15, 2016
Scott Bird
Rules Coordinator

WSR 16-15-056
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed July 15, 2016, 3:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-023.

Title of Rule and Other Identifying Information: WAC 182-500-0020 Washington apple health definitions—C.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 24, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 23, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 19, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349 or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clear up confusion, the agency is adding a definition for "client" in this section.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Greg Sandoz, P.O. Box 44504, Olympia, WA 98504-4504, (360) 725-1351.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

July 15, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-17-013, filed 8/7/15, effective 9/7/15)

WAC 182-500-0020 ((~~Washington apple health~~)) Definitions—C. "Caretaker relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living, who assumes primary responsibility for the child's care, and who is one of the following:

(1) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece.

(2) The spouse of such parent or relative (including same sex marriage or domestic partner), even after the marriage is terminated by death or divorce.

(3) Other relatives including relatives of half-blood, first cousins once removed, people of earlier generations (as shown by the prefixes of great, great-great, or great-great-great), and natural parents whose parental rights were terminated by a court order.

"Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally funded health care program established under Title XIX of the Social Security Act for people within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy income level (CNIL)" is the standard used by the agency to determine eligibility under a categorically needy program.

"Categorically needy (CN) scope of care" is the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to people eligible to receive benefits under a CN program. Some state-funded health care programs provide CN scope of care.

"Center of excellence" - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

"Centers for Medicare and Medicaid Services (CMS)" - The federal agency that runs the medicare, medicaid, and children's health insurance programs, and the federally facilitated marketplace.

"Children's health program or children's health care programs" See "Apple health for kids."

"Client" means a person who is an applicant for, or recipient of, any Washington apple health program, including managed care and long-term care. See definitions for "applicant" and "recipient" in RCW 74.09.741.

"Community spouse." See "spouse" in WAC 182-500-100.

"Cost-sharing" means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for nonnetwork providers, and spending for noncovered services.

"Cost-sharing reductions" means reductions in cost-sharing for an eligible person enrolled in a silver level plan in the health benefit exchange or for a person who is an American Indian or Alaska native enrolled in a qualified health plan (QHP) in the exchange.

"Couple." See "spouse" in WAC 182-500-0100.

"Covered service" is a health care service contained within a "service category" that is included in a Washington apple health (WAH) benefits package described in WAC 182-501-0060. For conditions of payment, see WAC 182-501-0050(5). A noncovered service is a specific health care service (for example, cosmetic surgery), contained within a service category that is included in a WAH benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC 182-501-0160). A noncovered service is not an excluded service (see WAC 182-501-0060).

"Creditable coverage" means most types of public and private health coverage, except Indian health services, that provide access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under premium-based programs included in Washington apple health (WAH). Creditable coverage is described in 42 U.S.C. 300gg-3 (c)(1).

WSR 16-15-058
PROPOSED RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)
[Filed July 18, 2016, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-046.

Title of Rule and Other Identifying Information: Repealing chapter 246-872 WAC, Automated drug distribution devices; and creating new chapter 246-874 WAC, Pharmacy and technology. The new chapter will include several parts regarding different technologies; the first will be automated drug dispensing devices (ADDD).

Hearing Location(s): Department of Health, Center Point Corporate Park, 20425 72nd Avenue South, Building 2, Suite 310, Kent, WA 98032, on August 31, 2016, at 2:30 p.m.

Date of Intended Adoption: August 31, 2016.

Submit Written Comments to: Tracy West, Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504, e-mail https://fortress.wa.gov/doh/policyreview, fax (360) 236-2260, by August 19, 2016.

Assistance for Persons with Disabilities: Contact Doreen Beebe by August 16, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules incorporate concepts found in the current WAC, build upon those concepts, and add clarity. The proposed rules also incorporate current practices used by the commission to approve policies and procedures. The proposed new chapter 246-874 WAC provides clearer requirements for installing and operating an ADDD. The proposed rules describe minimum supervision, access, security, recordkeeping, accountability, and quality assurance standards for an ADDD. The proposed rules state that if a facility installs and operates an ADDD according to these proposed standards, then no prior commission approval will be required. Removing the approval requirement will provide pharmacies and facilities with greater flexibility in the practice of pharmacy, and assist the commission in workload balance.

Reasons Supporting Proposal: Chapter 246-872 WAC is outdated and great improvement in technology has occurred in the last ten years prompting the commission to reevaluate the standards around the use of ADDDs. The current rules lack clear standards and require pharmacies and health care facilities to present their ADDD policies and procedures before the full commission for approval prior to the placement of an ADDD in the pharmacy or facility. Updated rules with clear standards will help streamline the process by eliminating full commission preapproval.

Statutory Authority for Adoption: RCW 18.64.005.

Statute Being Implemented: Chapter 18.64 RCW and RCW 18.64.005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Office of the Assistant Secretary, Health Systems Quality Assurance (HSQA), 111 Israel Road, Tumwater, WA 98501, (360) 236-4988; Implementation and Enforcement: Steve Saxe, Pharmacy Quality Assurance Commission, 111 Israel Road, Tumwater, WA 98501, (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 Tracy West, Office of the Assistant Secretary, HSQA, P.O. Box 47863, Olympia, WA 98504-7863, phone (360) 236-4988, fax (360) 236-4626, e-mail tracy.west@doh.wa.gov.

July 18, 2016
Steve Saxe, RPh
Executive Director

Chapter 246-874 WAC

PHARMACY AND TECHNOLOGY

NEW SECTION

WAC 246-874-010 Definitions. The following definitions apply to this chapter, unless the context clearly indicates otherwise:

(1) "ADDD" or "automated drug dispensing device" includes, but is not limited to, a mechanical system controlled remotely by a pharmacist that performs operations or activities, related to the storage, counting, and dispensing of drugs to a credentialed health care professional consistent with their scope of practice. "ADDD" does not include technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

(2) "Blind count" means a physical inventory on the ADDD taken by a pharmacist or other credentialed health care professional acting within their scope of practice, as determined by the pharmacist-in-charge (PIC) who performs a physical inventory without knowledge of or access to the quantities currently shown on electronic or other inventory systems.

(3) "Commission" means the Washington state pharmacy quality assurance commission.

(4) "Controlled substances" has the same meaning as defined in RCW 69.50.101.

(5) "Department" means the Washington state department of health.

(6) "Dispense" or "dispensing" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, labeling, or packaging necessary to prepare that prescription or order for delivery. For purposes of part 1, dispensing by an ADDD does not include compounding.

(7) "Electronic verification system" means an electronic verification, bar code verification, radio frequency identification (RFID), weight verification, or similar electronic process that accurately verifies that medications have been properly dispensed, labeled by or loaded into an ADDD.

(8) "Legend drugs" has the same meaning as defined in RCW 69.41.010.

(9) "Override" means the process by which appropriately licensed health care professionals, consistent with their scopes of practice, are permitted to access and remove from ADDD certain legend drugs, including controlled substances, prior to prospective drug utilization review and approval by a pharmacist.

(10) "Override list" means a list of emergency medications, tailored to the health care facility based on the nature of care delivered, which are subject to retrieval without prospective drug utilization review.

(11) "Part 1" means WAC 246-874-020 through 246-874-070.

(12) "Pharmacist" means a person who is licensed under chapter 18.64 RCW by the commission to engage in the practice of pharmacy.

(13) "Pharmacy technician" has the same meaning as defined in RCW 18.64A.010.

(14) "PIC" or "pharmacist-in-charge" means a pharmacist who has the responsibility for ensuring compliance with all laws and regulations governing the operation of their respective pharmacy, and is synonymous with WAC 246-869-070, 246-873-040, 246-865-060, and 246-904-030.

(15) "Prospective drug utilization review" means the evaluation and approval of medication orders prior to administration of the first dose by a pharmacist to:

(a) Ensure patient safety by intercepting prescribing errors; and

(b) Ensure the right of every patient to twenty-four-hour pharmacist access and care.

Prospective drug utilization review need not occur prior to administration of emergency medications.

(16) "Replenishment" includes checking stock, loading, unloading, filling and refilling of medications in the ADDD.

(17) "Secure area" means that drugs are stored in a manner to prevent unmonitored access by unauthorized individuals.

(18) "Supervision" means overseen directly by a pharmacist who is on the premises or indirectly by an electronic verification system for managing of ADDD inventory.

PART 1

AUTOMATED DRUG DISPENSING DEVICES

NEW SECTION

WAC 246-874-020 General applicability. (1) Part 1 sets the requirements for an ADDD managed by licensed pharmacies under chapter 18.64 RCW, health care entities as defined in RCW 18.64.011, health care facilities as defined in RCW 70.38.025, assisted living facilities as defined in RCW 18.20.020, nursing homes as defined in RCW 18.51.010, health maintenance organizations as defined in RCW 70.38.-025, and public health centers as defined in RCW 70.40.020, and any other entity authorized by the commission, that choose to use them.

(2) Use of an ADDD that conforms to the requirements in part 1 does not require approval by the commission. Pharmacies, including nonresident pharmacies shall provide written notice on a form provided by the department of the physical address of the facilities where ADDDs are located.

(3) Previously approved facilities using ADDDs shall have one year from the effective date of (date will be added by the code reviser office) to comply with part 1.

(4) Nothing in part 1 is applicable to technology that solely counts or stores, kiosks, robots, emergency kits, supplemental dose kits, or automation for compounding, administration, or packaging.

NEW SECTION

WAC 246-874-025 Pharmacist-in-charge designation requirement for an ADDD. Each pharmacy and facility using an ADDD shall designate a pharmacist-in-charge (PIC), a pharmacist who is licensed in Washington state. The PIC is responsible for oversight of the ADDDs, and to assure that drugs are procured, stored, delivered, and dispensed in

compliance with all applicable state and federal statutes and regulations.

NEW SECTION

WAC 246-874-030 General requirements for an ADDD. (1) The pharmacy and any facility using an ADDD shall have written policies and procedures in place prior to any use of an ADDD. The PIC shall review the written policies and procedures at least annually and make necessary revisions. The pharmacy or facility must document the required annual review and make available upon request by the commission or its designee. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(2) The pharmacy or facility must maintain a current copy of all policies and procedures related to the use of the ADDD and make them available within the pharmacy or facility where the ADDD is located. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(3) The policies and procedures must include, but are not limited to:

(a) All sections of part 1;

(b) User privileges based upon user type;

(c) Criteria for selection of medications subject to override and an override list approved by the pharmacy or facility's pharmacy and therapeutics committee or equivalent committee;

(d) Diversion prevention procedures; and

(e) Record retention and retrieval requirements that adhere to all state and federal laws and regulations. Records must be retained for a minimum of two years.

(4) An ADDD shall collect, and maintain all transaction information including, but not limited to, the identity of the individuals accessing the system, identity of all personnel loading the ADDD, to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability. The pharmacy or facility must maintain and make readily available on request all records of transaction. Electronic documents made available on a computer at the facility or pharmacy are permissible.

(5) Inventory control.

(a) Authorized personnel must place drugs into the ADDD in the manufacturer's original, sealed unit dose or unit-of-use packaging, in repackaged unit-dose containers or in other suitable containers to support patient care and safety and are in accordance with federal and state laws and regulations;

(b) When applicable, patient owned medications, which remain in the original prescription bottle, that have been properly identified, and have been approved for use per the facility's policies, may be stored in accordance with policies for safe and secure handling of medication practices.

(6) The PIC may designate a pharmacy designee to perform tasks in part 1. The PIC shall retain all professional and personal responsibility for any assisted tasks performed by personnel under his or her responsibility, as shall the pharmacy employing such personnel.

NEW SECTION

WAC 246-874-040 Security and safety requirements for ADDD. (1) The PIC shall ensure adequate security systems and procedures for the ADDD, addressing access, including:

(a) A system by which secure access of users is obtained by such methods as biometrics or some other secure technology; and

(b) Prevention of unauthorized access or use, including:

(i) System access for former employees must be removed immediately upon notification; and

(ii) Discharged patients shall have patient profiles removed from the ADDD as soon as possible but no later than twelve hours from notification of the discharge.

(2) The PIC or licensed pharmacy designee shall assign, discontinue, or change user access and types of drug privileges to the ADDD. Access to the ADDD must be limited to those Washington state credentialed health care practitioners acting within their scope of practice. Access to the ADDD by facility information technology employees or employees of similar title must be properly restricted and addressed in policies and procedures.

(a) Replenishment of medications in an ADDD is reserved to a pharmacist, pharmacy intern, or a pharmacy technician under the supervision of a pharmacist, or a nurse may replenish an ADDD using an electronic verification system, that ensures exact placement of secured compartments into the ADDD;

(b) Pharmacy technicians checking the accuracy of a second pharmacy technician's medication selections to be replenished into an ADDD without a pharmacist's final approval shall meet the criteria for specialized functions in WAC 246-901-035(1) and have documentation of training on file. All technician specialized functions must be approved by the commission prior to implementation; and

(c) Electronic verification system checking, or other approved technology may be used in place of manual double-checking of medication stocking of the ADDDs.

(3) A pharmacist shall perform prospective drug utilization review and approve each medication order prior to dispensing of a drug except if:

(a) The drug is a subsequent dose from a previously reviewed drug order;

(b) The prescriber is in the immediate vicinity and controls the drug dispensing process; or

(c) The system is being used to provide access to emergency medications on override and only a quantity sufficient to meet the immediate need of the patient is removed. Only medications needed to prevent death or severe adverse health consequences may be designated as emergency medications. Except for acute care settings, a pharmacist shall perform retrospective drug utilization review within twenty-four hours of the pharmacy being open.

(4) The pharmacist shall reconcile patient profiles added outside the normal admission discharge transfer process, no later than the next business day.

(5) Medication or devices may only be returned directly to the ADDD for reissue or reuse consistent with policy and procedures for safe and secure medication processes, which include, but are not limited to:

(a) Medications or devices stored in patient specific bins, matrices, or open pockets, excluding controlled substances, such as home medications or multiple use patient specific bottles may be returned to an ADDD so long as adequate controls are in place to ensure proper return.

(b) Medications stored in patient specific containers may not be returned to general stock for reuse.

(6) The PIC shall ensure a method is in place to address breach of security of the ADDD including, but not limited to:

(a) Tracking of malfunction and failure of the ADDD to operate correctly; and

(b) Downtime procedures in the event of a disaster or power outage that interrupts the ability of the pharmacy to provide services.

(7) An ADDD used in an assisted living facility must be located in a secure area, with both the area where the ADDD is located and the ADDD locked when not in use.

NEW SECTION

WAC 246-874-050 Accountability requirements for an ADDD. (1) The ADDD shall have a mechanism for securing and accounting for wasted, discarded, expired, or unused medication removal from the ADDD according to policies and procedures, and existing state and federal laws and regulations.

(2) The PIC shall implement procedures and maintain adequate records regarding use and accountability of legend drugs, including controlled substances, in compliance with state and federal laws and regulations including, but not limited to:

(a) A system to verify the accuracy of controlled substance counts including, but not limited to:

(i) Controlled substances must be perpetually inventoried with a blind count by a pharmacist or other credentialed health care professional acting within their scope of practice, as determined by the PIC each time they are accessed in an ADDD; except for controlled substances dispensed in dose specific amounts by an ADDD to a credentialed health care professional acting within their scope of practice without access to the remaining controlled substance inventory;

(ii) All controlled substances that are accessed for replenishment or removal in an ADDD shall have an inventory count performed at a minimum of once every seven days by two authorized persons licensed to handle drugs; and

(iii) Controlled substances must be stored in individually secured pockets or compartments within the ADDD. Storage in "matrix" drawers or open pocket drawers is prohibited.

(b) Facilities using a closed canister system must have a system to verify the accuracy of controlled substance counts by perpetual inventory that is regularly reviewed and reconciled by pharmacy staff.

(c) Controlled substance discrepancy monitoring and resolution, which includes:

(i) The PIC shall work with the facility or nursing administration to maintain an ongoing medication discrepancy resolution and medication monitoring process; and

(ii) A discrepancy report must be generated for each transaction where the count of a drug on hand in the device, does not reflect actual inventory. Each report must be resolved by the PIC or pharmacy designee and the facility or nursing administration or nurse designee. If there is an unresolved discrepancy after seventy-two hours from the time the discrepancy was discovered, and if determined to be a theft or a significant loss of drugs, the PIC shall report to the commission and the federal Drug Enforcement Administration as required by federal law.

(3) Wasted controlled substances.

(a) A hard-copy report of wastage shall show patient name, drug name and strength, dose withdrawn, date and time of waste, the amount wasted, and the identity of the person wasting and the witness;

(b) All controlled substances wasted shall have a witness, who is credentialed to administer or dispense drugs, and both the person wasting and the witness must sign the waste and it must be recorded in the ADDD.

NEW SECTION

WAC 246-874-060 Quality assurance process requirements for ADDD. Each pharmacy and facility shall establish and maintain a quality assurance and performance program that monitors performance of the ADDD, which is evidenced by written policies and procedures that are made readily available on request. Electronic documents made available on a computer at the facility or pharmacy are permissible. The PIC shall perform annual audits of compliance with all ADDD policies and procedures. The quality assurance program shall include, but is not limited to:

(1) Method for ensuring accurate replenishment of the ADDD;

(2) Procedures for conducting quality control checks for drug removal for accuracy;

(3) Method for reviewing override data and medication error data associated with ADDD and identifying opportunities for improvement.

NEW SECTION

WAC 246-874-070 Nursing students ADDD access. If a facility provides a clinical opportunity for nursing students enrolled in a Washington state nursing commission approved nursing program, a nursing student may access the ADDD only under the following conditions:

(1) Nursing programs shall provide students with orientation and practice experiences that include demonstration of competency of skills prior to using an ADDD;

(2) Nursing programs, health care facilities, and pharmacies shall provide adequate training for students accessing ADDD; and

(3) The nursing commission approved nursing programs, health care facilities, and pharmacies shall have policies and procedures for nursing students to provide medication administration safely, including:

(a) Access and administration of medications by nursing students based on student competencies;

(b) Orientation of students and faculty to policies and procedures related to medication administration and distribution systems; and

(c) Reporting of student medication errors, near misses and alleged diversion.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 246-872-010	Purpose.
WAC 246-872-020	What definitions do I need to know to understand these rules?
WAC 246-872-030	What are the pharmacy's responsibilities?
WAC 246-872-040	What are the responsibilities of the facility in the use of automated drug distribution devices?
WAC 246-872-050	What are quality assurance and performance improvement requirements for the use of automated drug distribution devices?

WSR 16-15-059
PROPOSED RULES
OFFICE OF ADMINISTRATIVE HEARINGS

[Filed July 18, 2016, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-076.

Title of Rule and Other Identifying Information: WAC 10-08-150 Adjudicative Proceedings—Interpreters, chapter 10-08 WAC contains the model rules of procedure which RCW 34.05.250 requires the chief administrative law judge (ALJ) to adopt for use by as many agencies as possible. The office of administrative hearings (OAH) is proposing to amend WAC 10-08-150 to ensure that OAH and other state agencies can effectively and efficiently engage interpreters for use before, during, and after administrative hearings.

Hearing Location(s): OAH, 2420 Bristol Court S.W., Olympia, WA 98502, August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: Ed Pesik, Deputy Chief ALJ, P.O. Box 42488, Olympia, WA 98504-2488, e-mail ed.pesik@oah.wa.gov, fax (360) 664-8721, by August 23, 2016.

Assistance for Persons with Disabilities: Contact Johnette Sullivan, Assistant Chief, ADA Coordinator, by e-mail johnette.sullivan@oah.wa.gov or (360) 407-2700.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OAH seeks to fully implement the legislative intent in RCW 2.42.010 and 2.43.010 for the use of interpreters in administrative hearings. The proposal amends WAC 10-08-150 to: (1) Protect the rights of persons who are deaf, who are speech or hearing impaired, or cannot readily speak or understand the English language, in legal proceedings before administrative agencies; (2) adopt the term "appointing authority" in RCW 2.42.010 and 2.43.010 in lieu of "presiding officer"; (3) define "adjudicative proceeding" to ensure that OAH and other state agencies can effectively and efficiently engage interpreters for use before, during, and after legal proceedings on the record; (4) list factors to determine "good cause" under RCW 2.43.030; (5) clarify terms for modes of spoken language interpretation; (6) update the process for a non-English-speaking person to request a sight translation of the decision or order; and (7) clarify the process for a request by an impaired person for a visual translation of a decision or order.

The proposed amendments will allow for the use of properly qualified interpreters by OAH and other state agencies under both state and agency master contracts consistent with the technology and processes now available.

Additionally, this proposal includes the emergency rule change filed on June 8, 2016, amending WAC 10-08-150. See WSR 16-13-047.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.250, 34.12.030, and 34.12.080.

Statute Being Implemented: WAC 10-08-150.

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: OAH recommends that statutory language in chapters 2.42 and 2.43 RCW be updated. The term "impaired person" in RCW 2.42.110 is not a term in common usage. The definitions in RCW 2.42.110 of "qualified interpreter" and "intermediary interpreter" do not reflect the use of technology and current certifications. The definition in RCW 2.43.020 of non-English-speaking person is outdated. The term in current use in federal and state agencies is a limited English proficiency individual. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP."

Name of Proponent: OAH, P.O. Box 42488, Olympia, WA 98504-2488, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ed Pesik, Deputy Chief ALJ, 2420 Bristol Court S.W., Olympia, WA 98502, (360) 407-2700.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule making does not result in any economic impact on small business or fiscal impact on school districts.

A cost-benefit analysis is not required under RCW 34.05.328. OAH's proposed rule amendment does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

July 18, 2016
Lorraine Lee
Chief ALJ

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-150 Adjudicative proceedings—Interpreters. (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative

proceeding, the ((~~presiding officer~~)) appointing authority shall appoint an interpreter to assist the party or witness throughout the proceeding. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in adjudicative proceedings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(2) An adjudicative proceeding under chapter 34.05 RCW includes a legal proceeding which occurs on the record, and also includes oral and written communications of a party to an agency proceeding, and the filing, issuance and entry of notices, motions, orders, decisions, petitions, and other documents. When a party or witness appears in a legal proceeding on the record, the appointing authority is the presiding officer, and otherwise the appointing authority is the agency head or designee.

(3)(a) The agency head or designee may make a predetermination that an interpreter is qualified to provide parties with a:

(i) Visual translation or sight translation of forms, notices, proposed exhibits, briefs and orders, either before or following the hearing; or

(ii) Visual or spoken-language interpretation of oral communication with the agency that is not on the record.

(b) The agency head or designee may maintain a list of interpreters who have been determined to be qualified to interpret before the agency.

(4) Relatives of any participant in a proceeding and employees of the agency involved in a proceeding shall not be appointed as interpreters in the proceeding. This subsection shall not prohibit the office of administrative hearings from hiring an employee whose ((~~sole~~)) function is to interpret at ((~~administrative hearings~~)) adjudicative proceedings on the record and as otherwise needed by impaired and non-English-speaking persons.

(5) The appointing authority shall appoint a qualified spoken language interpreter who is on the list of certified interpreters maintained by the administrative office of the courts (AOC), except as provided in this subsection. The appointing authority may find there is good cause to appoint a qualified spoken language interpreter who is not on the list of certified interpreters maintained by the AOC. "Good cause" includes, but is not limited to, consideration of the totality of circumstances and a determination by the appointing authority that:

(a) The current list of certified interpreters maintained by the AOC does not include an interpreter certified in the language spoken by the non-English-speaking person;

(b) The parties agree to the issue or motion;

(c) The motion or hearing is expedited or emergent;

(d) The matter involves general or procedural information;

(e) The matter involves sight translation of case-related documents including forms, notices, proposed exhibits, briefs, and orders, either before or following the hearing;

(f) The rescheduling of a hearing to appoint a certified interpreter would cause prejudicial delay;

(g) The certified interpreter qualified by the appointing authority becomes unavailable unexpectedly before completion of the adjudicative proceeding; or

(h) An interpreter who is certified to interpret in the courts of another state or the federal courts is available.

(((~~(3) The presiding officer~~))) (6) The appointing authority shall make a preliminary determination that an interpreter is able in the particular proceeding to interpret accurately all communication to and from the impaired or non-English-speaking person. This determination shall be based upon the testimony or stated needs of the impaired or non-English-speaking person, the interpreter's education, certifications, and experience in interpreting for contested cases or adjudicative proceedings, the interpreter's understanding of the basic vocabulary and procedure involved in the proceeding, and the interpreter's impartiality. The parties or their representatives may question the interpreter as to his or her qualifications and impartiality.

(((~~(4) If at any time during the proceeding,~~))) (7) If in the opinion of the impaired or non-English-speaking person, the ((~~presiding officer~~)) appointing authority or a qualified observer, the interpreter does not provide accurate and effective communication with the impaired or non-English-speaking person, the ((~~presiding officer~~)) appointing authority shall appoint another interpreter.

(((~~(5)~~))) (8) Mode of interpretation.

(a) The AOC recognizes three spoken language interpreting modes: Consecutive, simultaneous, and sight translation. Sight translation means the act of reading a written text out loud.

(b) Interpreters for non-English-speaking persons shall use the simultaneous mode of interpretation where the presiding officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency; otherwise, the consecutive mode of foreign language interpretation shall be used.

(((~~(b)~~))) (c) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person.

(((~~(c)~~))) (d) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall ((~~translate~~)) interpret all statements made by other hearing participants. The presiding officer shall ensure that sufficient extra time is provided to permit ((~~translation~~)) interpretation and the presiding officer shall ensure that the interpreter ((~~translates~~)) interprets the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(((~~(6)~~))) (9) An interpreter shall not, without the written consent of the parties to the communication, be examined as to any communication the interpreter interprets under circumstances where the communication is privileged by law. An interpreter shall not, without the written consent of the parties to the communication, be examined as to any information the interpreter obtains while interpreting pertaining to any proceeding then pending.

(((~~(7)~~))) (10) The presiding officer shall explain to the impaired or non-English-speaking party that a written deci-

sion or order will be issued in English, and that ((~~the party may contact the interpreter for an oral translation~~)) a visual translation or sight translation of the decision ((~~and that the translation itself~~)) is available at no cost to the party. ((~~The interpreter shall provide to the presiding officer and the party the interpreter's telephone number. The telephone number shall be attached to the decision or order mailed to the party. A copy of the decision or order shall also be mailed to the interpreter for use in translation.~~

~~(8)~~)) The presiding officer shall attach to or include in the decision or order a telephone number to request a visual translation or sight translation.

(11) If the party has a right to review of the order or decision, the presiding officer shall orally inform the party during the hearing of the right and of the time limits to request review.

(((~~9~~))) (12) The agency involved in the hearing shall pay interpreter fees and expenses.

WSR 16-15-060
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed July 18, 2016, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-046.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-2280 What is wellness education? and 388-845-2285 Are there limits to wellness education?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 24, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 23, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 9, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Centers for Medicare and Medicaid Services (CMS) approved an additional service to the Individual and Family Services (IFS) 1915(c) waiver. Wellness education was added and allows the developmental disabilities administration (DDA) to provide wellness information to waiver participants to assist them in achieving goals identified during their person-centered planning process.

Reasons Supporting Proposal: CMS approved the addition of Wellness Education to the 1915(c) Individual and Family Services Waiver. This change will allow DDA to receive federal matching funds for these waivered services while providing additional services to eligible clients of DDA.

Statutory Authority for Adoption: RCW 71A.12.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ann Whitehall, DDA, P.O. Box 45310, Olympia 98504-5310, (360) 725-3445.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will have no effect on small businesses. They only impact DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(vii) and relate only to client medical eligibility.

July 13, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2280 What is wellness education? Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers, and the contracted wellness education provider. This service is available on the basic plus, individual and family services, and core waivers.

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2285 Are there limits to wellness education? Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210. The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

WSR 16-15-062
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed July 18, 2016, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-070.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-105-0045 Bed or unit hold—Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL), 388-106-0336 What services may I receive under the residential support waiver?, and 388-106-0338 Am I eligible for services funded by the residential support waiver?; and create new WAC 388-106-0337 When are you not eligible for adult day health services?

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 24, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., August 23, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by August 9, 2016, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department was directed to develop enhanced service facilities in the 2013-15 biennium budget. The DSHS home and community services division developed the 1915(c) residential support waiver (RSW) to provide medicaid funding of supports and services in certain residential settings. These rules will be amended to add retainer payments to RSW and to add two new waiver services, adult day health and expanded community services.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Barbara Hanneman, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2525.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 12, 2016
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-20-011, filed 9/25/09, effective 10/26/09)

WAC 388-105-0045 Bed or unit hold—medicaid ((~~resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL)~~)) residents at an ESF, AFH, ARC, EARC, or AL who need short-term care at a nursing home or hospital. (1) ((~~When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a medicaid eligible resident's bed or unit when~~)) An enhanced services facility (ESF) that contracts to provide services under chapter 70.97 RCW and an adult family home (AFH) or assisted living facilities contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL) under chapter 74.39A RCW, must hold a medicaid eligible resident's bed or unit if:

(a) The medicaid resident needs short-term care ((~~is needed~~)) in a nursing home or hospital;

(b) The medicaid resident is likely to return to the ESF, AFH, ARC, EARC, or AL; and

(c) ((~~Payment is made~~)) The department pays the ESF, AFH, ARC, EARC, or AL as set forth under subsection (3) or (4) of this section.

(2)((~~(a) When the department pays the contractor to hold the medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the medicaid resident's hospital or nursing home stay is not short term and the medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.~~

~~(b) A medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.~~

~~(c) When a medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty-four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new bed hold leave will begin only when the returned resident has resided in the facility for more than twenty-four hours before the resident's next discharge.~~

~~(d) When an AFH, ARC, EARC, or AL facility discharges a resident to a nursing home or hospital and the resident is out of the facility for more than twenty-four hours, then by using e-mail, fax or telephone, the facility must notify the department of the resident's discharge within twenty-four hours after the initial twenty-four hours has passed. When the end of the initial twenty-four hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty-four hours after the weekend or holiday~~)) The ESF, AFH, ARC, EARC, or AL must hold a

medicaid resident's bed or unit for up to twenty days when the department pays the ESF, AFH, ARC, EARC, or AL under subsections (3) or (4) of this section.

(3) The department will ((~~compensate the contractor for holding the bed or unit for the:~~

~~(a) First through seventh day at seventy percent of the medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and~~

~~(b) Eighth through the twentieth day, at eleven dollars a day~~)) pay an ESF seventy percent of the resident's medicaid daily rate set at the time he or she left the ESF for the first through twentieth day of the resident's hospital or nursing home stay.

(4) The department will pay an AFH, ARC, EARC, or AL ((~~facility may seek third-party payment to hold a bed or unit for twenty-one days or longer. The third-party payment shall not exceed the medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the medicaid resident may return to the first available and appropriate bed or unit~~)) seventy percent of the resident's medicaid daily rate set at the time he or she left the AFH, ARC, EARC, or AL for the first through seventh day of the resident's hospital or nursing home stay and eleven dollars a day for the eighth through twentieth day.

(5) ((~~The department's social worker or case manager determines whether the:~~

~~(a) Stay in a nursing home or hospital will be short-term; and~~

~~(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.~~

~~(6)~~)) A medicaid resident's short-term stay in a nursing home or hospital must be longer than twenty-four hours for subsection (3) or (4) of this section to apply.

(6) If a medicaid resident stays at a hospital or nursing home for more than twenty-four hours, the ESF, AFH, ARC, EARC, or AL must notify the department by e-mail, fax, or telephone within twenty-four hours after the initial twenty-four hour period. If the end of the initial twenty-four hour period falls on a weekend or state holiday, the ESF, AFH, ARC, EARC, or AL must notify the department within twenty-four hours after the weekend or holiday.

(7) If a medicaid resident returns to the ESF, AFH, ARC, EARC, or AL from the hospital or nursing home and stays there for less than twenty-four hours before returning to the hospital or nursing home, the existing bed hold period continues to run. If the medicaid resident stays at the ESF, AFH, ARC, EARC, or AL for more than twenty-four hours before returning to the hospital or nursing home, a new bed hold period begins.

(8) The department's social service worker or case manager may determine that the medicaid resident's hospital or nursing home stay is not short term and he or she is unlikely to return to the ESF, AFH, ARC, EARC, or AL. If the social service worker or case manager makes such a determination, the department may cease payment the day it notifies the contractor of its decision.

(9) An ESF, AFH, ARC, EARC, or AL may seek third-party payment for a bed or unit hold that lasts for twenty-one days or longer or if the department determines that the medicaid resident's hospital or nursing home stay is not short-term and he or she is unlikely to return. The third-party payment must not exceed the resident's medicaid daily rate paid to the ESF, AFH, ARC, EARC, or AL.

(10) If third-party payment is not available for a bed or unit hold that lasts for twenty-one days or longer, the medicaid resident may return to the first available and appropriate bed or unit at the ESF, AFH, ARC, EARC, or AL if he or she continues to meet the admission criteria under chapter 388-106 WAC.

(11) When the medicaid resident's stay in the hospital or nursing home exceeds twenty days or the department's social service worker or case manager determines that the medicaid resident's stay in the nursing home or hospital is not short-term and ((~~the resident~~)) he or she is unlikely to return to the ESF, AFH, ARC, EARC, or AL, ((~~facility, then~~)) only subsection (((~~(4)~~))) (9) and (10) of this section ((~~applies to any~~)) apply to a private ((~~contractual arrangements that~~)) contract between the contractor ((~~may make with~~)) and a third party ((~~in regard to the discharged~~)) regarding the medicaid resident's unit or bed.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

(a) Personal care;

(b) Supportive services;

(c) Supervision in the home and community;

(d) Twenty-four hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management; and

(g) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

(a) Personal care((~~,~~));

(b) Supportive services((~~,~~));

(c) Supervision in the home and community((~~, and 24~~));

(d) Twenty-four-hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management;

(g) Coordination and collaboration with a contracted behavior support provider; and

(h) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

(((~~(2)~~))) (3) Enhanced services facilities that will provide:

(a) Personal care((~~,~~));

(b) Supportive services((~~,~~));

(c) Supervision in the home and community((~~, and~~));

(d) Twenty-four hour on-site response staff;

(e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;

(f) Medication management; and

(g) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through WAC 388-107-0270;

(((~~(3)~~))) (4) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000((~~, when the items are~~)) when:

(a) Medically necessary under WAC 182-500-0005; ((~~and~~))

(b) Necessary:

(i) For life support;

(ii) To increase your ability to perform activities of daily living; or

(iii) To perceive, control, or communicate with the environment in which you live; ((~~and~~))

(c) Directly medically or remedially beneficial to you; ((~~and~~))

(d) ((~~In addition to~~)) They are additional and do not replace any medical equipment ((~~and/~~))or supplies otherwise provided under medicaid ((~~and/or~~)), or medicare, or both; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility((~~,~~));

(((~~(4)~~))) (5) Client support training to address your needs identified in your CARE assessment or ((~~in a~~)) other professional evaluation((~~,~~)) that are ((~~in addition to~~)) additional and do not replace the services required by the department's contract with the residential facility and ((~~that~~)) meet a therapeutic goal, such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers((~~,~~));

(((~~(5)~~))) (6) Nurse delegation((~~, as allowed in~~)) under RCW 18.79.260((~~,~~)) when:

(a) You ((~~are receiving~~)) receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) The delegating nurse considers your medical condition ((~~is considered~~)) stable and predictable ((~~by the delegating nurse~~));

(c) The services ((~~are provided in compliance~~)) comply with WAC 246-840-930; and

(d) ((~~It is in addition to, and does~~)) The services are additional and do not replace((~~,~~)) the services required by the department's contract with the residential facility((~~.~~));

(((~~(6)~~))) (7) Skilled nursing((~~,~~)) when ((~~the service is~~)):

(a) Provided by a registered nurse or licensed practical nurse under ((~~the supervision of~~)) a registered nurse's supervision;

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) ((~~In addition to~~)) Additional and ((~~does~~)) do not replace the services required by the department's contract with the residential facility((~~.~~));

(((~~(7)~~))) (8) Nursing services((~~, when you are~~)) not already ((~~receiving this type of service~~)) received from another resource((~~. A registered nurse may perform any of the following activities. The frequency and scope of the nursing services is~~)), based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager((~~.~~)), including any one or more of the following activities performed by a registered nurse:

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency((~~. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement.~~)) as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource((~~.~~));

(e) File review; ((~~and/~~))or

(f) Evaluation of health-related care needs affecting service plan and delivery((~~.~~));

(9) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-106-0337 When are you not eligible for adult day health services? You are not eligible for adult day health if you:

(1) Can independently perform or obtain the services provided in an adult day health center; or

(2) Have referred care needs that:

(a) Exceed the scope of authorized services that the adult day health center is able to provide;

(b) Do not need to be provided or supervised by a licensed nurse or therapist;

(c) Can be met in a less structured care setting;

(d) In the case of skilled care needs, are being met by paid or unpaid providers;

(e) Live in a nursing home or other institutional facility; or

(f) Are not capable of participating safely in a group care setting.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0338 Am I eligible for services funded by the residential support waiver? (1) You are eligible for services funded by the residential support waiver if ((~~you meet all of the following criteria. The department must assess~~)) the department, based on its assessment of your needs in CARE((~~and determine that~~)), determines you meet all of the following criteria:

(((~~1~~))) (a) You are at least eighteen years ((~~or older~~)) old and blind or have a disability((~~,~~)) as defined in WAC 182-512-0050, or are age sixty-five or older;

(((~~(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if~~)) (b) Your income and resources fall within the limits set in WAC 182-515-1505((~~,~~)) and meet the income and resource criteria for home and community based waiver programs and hospice clients((~~,~~));

(((~~3~~))) (c) Your CARE assessment shows you need the level of care provided in a nursing facility (((~~,~~))or that you will likely need ((~~the~~)) this level of care within thirty days unless you receive residential support waiver services ((~~are provided) which is~~)) as defined in WAC 388-106-0355(1)((~~,~~));

(d) You have been assessed as medically and psychiatrically stable and one ore more of the following applies:

(((~~4~~))) (i) You currently reside at a state mental hospital or the psychiatric unit of a hospital ((~~past the time you~~)) and the hospital has found you are ready for discharge to the community; ((~~and~~

~~(5) You have been assessed as stable and ready for discharge by the hospital; and~~

~~(6)~~)) (ii) You have a history of frequent or protracted psychiatric hospitalizations; ((~~and~~)) or

(iii) You have a history of an inability to remain medically or behaviorally stable for more than six months and you;

(A) Have exhibited serious challenging behaviors within the last year; or

(B) Have had problems managing your medication which has affected your ability to live in the community;

(((~~(7) Due to~~)) (e) Because of the protracted nature of your behavior and clinical complexity, you have no other placement options ((~~as evidenced by you being unsuccessful in finding~~)) and have found no community placement with ((~~otherwise~~)) a qualified community ((~~providers; and~~)) provider;

(((~~8~~))) (f) You have behavioral or clinical complexity that requires ((~~the level of supplementary~~)) staffing supports available only in the qualified community settings provided through the residential support waiver; and

(((~~9~~))) (g) You require caregiving staff with specific training in providing personal care, supervision, and behavioral supports to adults with challenging behaviors.

(2) Under this section, "challenging behaviors" means a persistent pattern of behaviors or uncontrolled symptoms of a cognitive or mental condition that inhibit the individual's functioning in public places, ((~~in~~)) the facility, or integration within the community((~~. These behaviors~~)) that have been present for long periods of time or have manifested as an acute onset.

WSR 16-15-064
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed July 18, 2016, 11:53 a.m.]

Supplemental Notice to WSR 16-11-102.

Preproposal statement of inquiry was filed as WSR 16-02-117 on January 6, 2016.

Title of Rule and Other Identifying Information: WAC 220-36-023 Salmon—Grays Harbor fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on August 24, 2016, at 10 a.m. - 12 p.m.

Date of Intended Adoption: On or after August 25, 2016.

Submit Written Comments to: Scott Bird, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 24, 2016.

Assistance for Persons with Disabilities: Contact Dolores Noyes by August 24, 2016, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal includes rule changes to the Grays Harbor commercial fishery needed as a result of the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council. This proposal reflects additional changes to WAC 220-36-023 from what was proposed in WSR 16-11-102, filed on March 18, 2016.

The following summarizes changes made since the filing of the original CR-102 that was filed as WSR 16-11-102. These changes were made based on public input received and a review of season structure and management objectives within Grays Harbor.

Changes: Catch Area 2C:

- Adjustment to days scheduled in week 43, October 17 and 18, to twelve hour opens.
- Allow the retention of unmarked coho during openings in week 43, October 17 and 18, and during openings in week 45, October 30 and 31.

Reasons Supporting Proposal: These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [No information supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Mike Scharpf, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1205; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2799; and Enforcement: Chris Anderson, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement
Commercial Salmon Fishing, Grays Harbor, 2016

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: This proposed rule change incorporates the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Grays Harbor while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and nonlocal species of fish listed under the federal Endangered Species Act as threatened or endangered. The rule includes legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None, these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor that are closed to commercial harvest methods, and explain legal gear requirements. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rule changes are similar to the requirements of the rule in previous years and primarily only adjust opening and closing dates. The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there are no additional costs to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rule changes do not affect the harvestable numbers of salmon available to commercial fisher[s] licensed to fish in Grays Harbor. Therefore, the proposed rule changes should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs: The proposed rule changes do not require any additional equipment, supplies, labor, or administrative costs. Therefore, no costs for compliance are anticipated.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Most businesses affected by these rule changes are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington department of fish and wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating the agreements underlying these rules. Additionally, WDFW will allow for written public comment and hold a public hearing on these rule changes as required under the Administrative Procedure Act, chapter 34.05 RCW.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor will be required to comply with the rule.

A copy of the statement may be obtained by contacting Mike Scharpf, 48 Devonshire Road, Montesano, WA 98563, phone (360) 249-1205, fax (360) 249-1229, e-mail Mike.Scharpf@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

July 15, 2016
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-086, filed 9/16/15, effective 10/11/15)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon, and shad as provided in this section and in the times and area identified in the chart below.

Time:	Areas:
7:00 a.m. through ((~~11:59 a.m.~~)) 7:00 p.m. October ((~~11~~)) 24;	Area 2A and Area 2D
((~~12:30 p.m.~~)) 7:00 a.m. through ((~~4:30~~)) 7:00 p.m. October ((~~14~~)) 25; AND	
((~~8:30~~)) 7:00 a.m. through ((~~5:30~~)) 7:00 p.m. October ((~~18;~~)) 26.	
((~~8:30 a.m. through 5:30 p.m. October 19;~~	
~~8:00 a.m. through 5:00 p.m. October 20;~~	

Time:	Areas:
~~8:00 a.m. through 5:00 p.m. October 21;~~	
~~8:00 a.m. through 5:00 p.m. November 1;~~	
~~8:00 a.m. through 5:00 p.m. November 2;~~	
~~8:00 a.m. through 5:00 p.m. November 3;~~	
~~AND~~	
~~8:00 a.m. through 5:00 p.m. November 4.~~	
~~6:30 a.m. through 3:30 p.m. October 26;~~	~~Area 2C~~
~~AND~~)) 6:30 a.m. through 6:30 p.m. October 17;	Area 2C
6:30 a.m. through ((~~3:30~~)) 6:30 p.m. October ((~~27~~)) 18.	
7:00 a.m. through 7:00 p.m. October 30;	
AND	
7:00 a.m. through 7:00 p.m. October 31.	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(c) Area 2C from October 1 through November 30: Gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) It is unlawful to utilize any object, except the vessel deploying the gear, to impede a gillnet or its attached line or float from drifting.

(iii) Mesh size must not exceed nine inches.

(iv) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. The lead line must not rest on the bottom in such a manner as to prevent the net from drifting. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked and any time a fish is being held in accordance with (b) and (c) of this subsection. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead ((~~and wild (unmarked) coho~~)) must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A((~~, 2C,~~)) and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, ((~~or hatchery~~)) coho ((~~marked by a healed scar at the site of the adipose fin,~~)) or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on October 1, for openings in Areas 2A, 2C, or 2D.

(10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 16-15-066
PROPOSED RULES
OLYMPIC REGION CLEAN AIR AGENCY
[Filed July 18, 2016, 2:59 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations, Regulation 6 - Required Permits, Rule 6.3 Asbestos.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on September 14, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orcaa.org, fax (360) 491-6308, by September 9, 2016.

Assistance for Persons with Disabilities: Contact Dan Nelson by September 2, 2016, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to revise the entire Asbestos Rule 6.3. This revision will better align our rule with rules of other state and local agencies. This will ease some of the frustration of companies that operate within differing jurisdictions. Significant changes include moving from a permit system to a notification system; the notification period will be ten days for most asbestos projects; change the size of an asbestos project to forty-eight square feet to align with other agencies; require an asbestos survey for all structures being demolished that are greater than one hundred twenty square feet; and, renovations would require an asbestos survey when the surface area is forty-eight square feet or more.

Reasons Supporting Proposal: The asbestos abatement contractors have expressed concern of differing requirements in different jurisdictions.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

July 18, 2016
Francea L. McNair
Executive Director

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 16-16 issue of the Register.

WSR 16-15-070
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF REVENUE
(By the Code Reviser's Office)
[Filed July 19, 2016, 8:21 a.m.]

WAC 458-20-19404 and 458-20-19404A, proposed by the department of revenue in WSR 16-02-111, appearing in issue 16-02 of the Washington State Register, which was distributed on January 20, 2016, is withdrawn by the office of the code reviser 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 16-15-071
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(By the Code Reviser's Office)

[Filed July 19, 2016, 8:21 a.m.]

WAC 388-25-0515, proposed by the department of social and health services in WSR 16-02-105, appearing in issue 16-02 of the Washington State Register, which was distributed on January 20, 2016, is withdrawn by the office of the code reviser 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 16-15-075
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed July 19, 2016, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-085.

Title of Rule and Other Identifying Information: Lumbar fusion and structured intensive multidisciplinary programs (SIMP) rule, department of labor and industries (L&I) is proposing to repeal the SIMP rules - WAC 296-20-12055 through 296-20-12095.

Hearing Location(s): L&I, Tumwater Headquarters Building, S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on August 26, 2016, at 11:00 a.m.

Date of Intended Adoption: November 1, 2016.

Submit Written Comments to: Jami Lifka, P.O. Box 44321, Olympia, WA 98504-4321, e-mail Jami.Lifka@Lni.wa.gov, fax (360) 902-6315.

Written comments must be received no later than 5 p.m., August 26, 2016.

Assistance for Persons with Disabilities: Contact Jami Lifka by August 1, 2016, TTY 711 for (360) 902-4941 or directly to (360) 902-4941.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to bring L&I's rules into compliance with a recent coverage determination by the Washington state health technology clinical committee (HTCC). HTCC made a determination that lumbar fusion for uncomplicated degenerative disc disease (UDDD) is no longer a covered procedure. Before this noncoverage determination was made, a previous HTCC determination required lumbar fusion candidates with UDDD to attend a SIMP prior to having surgery. This previous coverage determination is contained within SIMP rules and is now inconsistent with this new HTCC noncoverage determination. L&I's payment policies, the lumbar fusion surgical guideline and a medical coverage decision have already been amended effective March 7, 2016, in response to HTCC lumbar fusion for UDDD noncoverage determination.

SIMP program requirements are currently also contained within the department's fee schedules' payment policies and, other than removing the lumbar fusion for UDDD requirement, will remain in effect when SIMP rules are repealed.

Reasons Supporting Proposal: L&I will be reviewing the best available scientific evidence on the treatment of chronic pain, and will work with clinicians to develop and implement policies regarding new medical coverage decisions, medical treatment guidelines, and/or payment policies about chronic pain management to assist injured workers heal and return to work. Repealing SIMP rules is the most effective and efficient way of removing SIMP requirement for lumbar fusion for UDDD from existing rules and will also allow L&I flexibility when making future changes in the management of chronic pain in general.

Statutory Authority for Adoption: RCW 70.14.120, 51.04.020, and 51.04.030.

Statute Being Implemented: RCW 70.14.120.

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: Pursuant to RCW 70.14.120, participating agencies, including L&I, must comply with a determination of HTCC. HTCC made the lumbar fusion for UDDD noncoverage determination using an open and transparent process after considering the best available scientific evidence, agency utilization data, and public testimony regarding the safety, efficacy and cost-effectiveness of lumbar fusions for UDDD. HTCC made its final coverage determination January 15, 2016.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jami Lifka, Office of the Medical Director, (360) 902-4941; Implementation: Leah Hole-Marshall, Medical Administrator, Office of the Medical Director, (360) 902-4996; and Enforcement: Vickie Kennedy, Assistant Director, Insurance Services, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required. This rule making repeals existing requirements related to medical coverage decisions under RCW 51.04.030 and in part, the repeal is required by statute. Because this rule making repeals existing rules and adds no new requirements there are no compliance costs to be analyzed for a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because this rule making repeals existing rules and adds no new requirements.

July 19, 2016
Joel Sacks
Director

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-20-12055	Structured intensive multidisciplinary program (SIMP) for chronic noncancer pain.
WAC 296-20-12060	SIMP requirements for lumbar fusion and artificial disc replacement candidates.
WAC 296-20-12065	SIMP definitions.
WAC 296-20-12070	SIMP evaluation phase.
WAC 296-20-12075	SIMP treatment phase.
WAC 296-20-12080	SIMP follow-up phase.
WAC 296-20-12085	Requirements the SIMP provider must meet.
WAC 296-20-12090	Requirements the worker must meet for a SIMP.
WAC 296-20-12095	SIMP referral and prior authorization requirements.

WSR 16-15-076
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed July 19, 2016, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-078.

Title of Rule and Other Identifying Information: WAC 296-23-245 Licensed nursing billing instructions.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501, on August 23, 2016, at 1:30 p.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: David Schultz, L&I, Health Services Analysis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail david.schultz@lni.wa.gov, fax (360) 902-4249, by 5 p.m., on August 23, 2016.

Assistance for Persons with Disabilities: Contact office of information and assistance by August 16, 2016, TTY (360) 902-5797 or (360) 902-6687.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are being proposed to eliminate the existing differential payment for advanced registered nurse practitioners (ARNP). ARNPs are able to practice independently as attending providers and we need greater access to ARNPs. The anticipated effect is a [to] maintenance [maintain] or increase in the number of ARNPs who could treat injured workers.

Reasons Supporting Proposal: L&I has a perpetual interest in maintaining or increasing access of care for injured workers so they can get quality and timely treatment from licensed and qualified providers.

Statutory Authority for Adoption: RCW 51.04.030, 51.04.020.

Statute Being Implemented: RCW 51.04.030.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: More qualified and licensed providers will continue to treat injured workers. Quality of care for injured workers will also not be affected by this proposed rule change. Also there will be no significant additional cost to the Medical Aid Fund.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: David Schultz, Tumwater, Washington, (360) 902-4244; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per review of chapter 19.85 RCW, no small business economic impact statement is necessary because there are no associated compliance requirements or costs to small businesses created by the proposed rule updates.

A cost-benefit analysis is not required under RCW 34.05.328. The department has determined that the likely negligible costs of the proposed amendment, estimated at less than 1/4 of one percent of total medical aid expenditure for FY 2016, are outweighed by the benefit of having more qualified and licensed providers continue to treat injured workers.

July 19, 2016
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 01-18-041, filed 8/29/01, effective 10/1/01)

WAC 296-23-245 Licensed nursing billing instructions. (1) Registered nurses may be required to obtain provider account numbers from the department as outlined by department policy.

(2) Advanced registered nurse practitioners must obtain provider account numbers from the department.

(3) Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

(4) Refer to the department's billing instructions for additional information.

(5) Services performed by advanced registered nurse practitioners must be billed using the appropriate procedure code number listed in the fee schedules preceded by a Type of Service Code "N." ((~~The rate of reimbursement for the services billed by advanced registered nurse practitioners will be ninety percent of the value listed in the fee schedules.~~))

(6) Refer to WAC 296-20-303 for rules regarding home attendant services.

WSR 16-15-079
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed July 19, 2016, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-115.

Title of Rule and Other Identifying Information: Rules within Title 192 WAC related to the payment of unemployment benefits and employer charging, are amended.

Hearing Location(s): Employment Security Department (ESD), 212 Maple Park Avenue, Maple Leaf Conference Room, 2nd Floor, Olympia, WA, on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: August 26, 2016.

Submit Written Comments to: Juanita Myers, ESD, P.O. Box 9046, Olympia, WA 98507, e-mail jmyers@esd.wa.gov, fax (360) 902-9605, by August 22, 2016.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer by August 22, 2016, TTY 711 or (360) 902-9354.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department has developed a new benefit payment system which will allow a number of functions to be performed by claimants online, in addition to telephone or paper. Rules are amended to incorporate these changes. In addition, policy changes which could not be adopted due to the limitations of the legacy computer system, or changes made that are consistent with good public policy, are proposed.

- Rules are updated to allow delivery and response via online services, including e-mail.
- Technical changes are made to correct the statutory citations in the rules.
- Penalties for failure to respond to requests for information by the department are clarified.
- Response deadlines are updated for consistency and to allow for online responses.
- The option to cancel claims is limited to special conditions, consistent with general insurance industry practice.
- Claimants are allowed more flexibility and more time to backdate the effective date of their initial claim and reopened claims.
- The department will no longer issue written availability denials for one or two sevenths of a week; these will be treated as reductions in benefits rather than denials. This will reduce overpayments because claimants will not be conditionally paid until a written decision is issued when information shows they were not available for work on one or more days of a week.
- The department will charge $25.00 for dishonored payments on benefit overpayments.
- Interest will accrue on the total overpayment, including interest, penalties, court costs, and charges for dishonored payments, in addition to the principal balance.
- Interest is calculated monthly beginning with the date payment is due, rather than the first day of the following month.
- Claimants can choose the amount to be offset against their weekly benefit to repay an existing overpayment.
- At their request, claimants can ask that the department hold conditional payments until their eligibility for benefits is established.
- Benefits paid to a claimant who has provided evidence of authorization to work in the United States will be conditionally paid pending verification with the federal government.
- Appeals, petitions for review and petitions for reconsideration can be filed online.
- When hours of work are not reported by other states, the federal minimum wage will be used to estimate the hours worked. Since Washington's minimum wage is higher than most states, using our minimum wage could make low-earning claimants with out-of-state wages unable to establish a valid Washington claim.
- When identifying individuals who are likely to exhaust benefits, the calculation will be made after all wages have been received, rather than those claims valid in the first week claimed. This permits claimants waiting for out-of-state, federal, and military wages to be provided enhanced reemployment services when their claim is validated.
- Provides that negotiated settlements will presume that equity and good conscience applies to instances in which the employer or claimant lives below the federal lower living standard income level. This is consistent with the policy on overpayment waivers.
- Claimants enrolled in the self-employment assistance program must report gross income (as opposed to net) for income from any source other than their self-employment. This is consistent with income reporting by all claimants.
- Benefits will be charged to employers in the quarter containing the first week claimed, rather than the date payment is issued.
- An employer who incorrectly reports an individual's wages, and a claimant's benefits are subsequently reduced due to a later corrected report, the employer will be charged for one hundred percent of benefits that should not have been paid.

Reasons Supporting Proposal: The proposed rules implement improvements in technology provided by the department's new unemployment benefit computer system that will streamline the application and eligibility determination process for benefits. Claimants and employers will be able to take advantage of eservices offered by the new system. This will reduce the amount of time it will take to make a decision about a claimant's eligibility for benefits. Those allowed will receive payment more quickly. If benefits are denied, appeals can be filed more quickly than today's process.

Other rules are amended to streamline the unemployment insurance program. For example, rules related to filing, backdating, reopening, and canceling claims will provide claimants with consistency in services; under existing rules claimants must establish good cause for a late filing, even if the number of weeks in question is low. Other changes, such as charging a fee for dishonored payments and compounding interest, will add incentives for the repayment of overpay-

ments, benefiting both the unemployment insurance trust fund and the administrative contingency fund.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Title 50 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, Olympia, (360) 902-9665; Implementation and Enforcement: Neil Gorrell, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not impose additional costs on businesses in general, nor on small businesses in particular.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, ESD, 212 Maple Park Drive, P.O. Box 9046, Olympia, WA 98503, phone (360) 902-9665, fax (360) 902-9605, e-mail jmyers@esd.wa.gov.

Lisa Marsh

Deputy Commissioner

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation. (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file ((~~a written~~)) an appeal or a petition for hearing by using the department's online services, by mailing it to the address indicated on the determination notice or other appealable document, or ((~~sending it~~)) by ((~~fax~~)) faxing it to the ((~~address or~~)) fax number indicated on the determination notice or other appealable document.

The appeal or petition for hearing must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal ((~~and/or~~)) or petition for hearing ((~~shall~~)) must be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review, including filing by using the department's online services, in accordance with the provisions of WAC 192-04-170. The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review ((~~shall~~)) must be filed in accordance with the provisions of RCW 50.32.025.

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-170 Decision of commissioner—Petition for review—Filing—Reply. (1) The written petition for review ((~~shall~~)) must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555, within thirty days of the date of mailing or delivery of the decision of the office of administrative hearings, whichever is the earlier.

(2) Any written argument in support of the petition for review must be attached to the petition for review and be filed at the same time. The commissioner's review office will acknowledge receipt of the petition for review by assigning a review number to the case, entering the review number on the face of the petition for review, and setting forth the acknowledgment date on the petition for review. The commissioner's review office will also ((~~mail~~)) send copies of the acknowledged petition for review and attached argument in support thereof to the petitioning party, nonpetitioning party and their representatives of record, if any.

(3) Any reply to the petition for review and any argument in support thereof by the nonpetitioning party ((~~shall be mailed~~)) must be filed by using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555. The reply must be received by the commissioner's review office within fifteen days of the date of ((~~mailing of~~)) the acknowledged petition for review. An informational copy ((~~shall~~)) must be mailed by the nonpetitioning party to all other parties of record and their representatives, if any.

(4) The petition for review and argument in support thereof and the reply to the petition for review and argument in support thereof ((~~shall~~)) must:

(a) Be captioned as such, set forth the docket number of the decision of the office of administrative hearings, and be signed by the party submitting it or by his or her representative.

(b) Be legible, reproducible and five pages or less.

(5) Arrangements for representation and requests for copies of the hearing record and exhibits will not extend the period for the filing of a petition for review, argument in support thereof, or a reply to the petition for review.

(6) Any argument in support of the petition for review or in reply thereto not submitted in accordance with the provisions of this regulation shall not be considered in the disposition of the case absent a showing that failure to comply with these provisions was beyond the reasonable control of the individual seeking relief.

AMENDATORY SECTION (Amending WSR 10-20-082, filed 9/29/10, effective 10/30/10)

WAC 192-04-190 Petition for reconsideration—Filing—Consideration—Disposition—Judicial review. (1) A written petition for reconsideration and argument in support thereof may be filed within ten days of the date of ((~~mailing or delivery of~~)) the decision of the commissioner((~~, whichever is the earlier~~)). It ((~~shall be mailed~~)) must be filed by

using the department's online services or by mailing it to the Commissioner's Review Office, Employment Security Department, Post Office Box 9555, Olympia, WA 98507-9555((~~, and to~~)). It should also be sent to all other parties of record and their representatives.

(2) No matter will be reconsidered by the commissioner unless it clearly appears from the face of the petition for reconsideration and the argument submitted in support thereof that (a) there is obvious material, clerical error in the decision or (b) the petitioner, through no fault of his or her own, has been denied a reasonable opportunity to present argument or respond to argument pursuant to WAC 192-04-170.

(3) A petition for reconsideration shall be deemed to have been denied if, within twenty days from the date the petition for reconsideration is filed, the commissioner does not either (a) dispose of the petition for reconsideration or (b) mail or deliver to the parties a written notice specifying the date by which he or she will act on the petition for reconsideration. If no action is taken by the date specified in such written notice, the petition will be deemed to have been denied.

(4) A petition for reconsideration does not stay the effectiveness of the decision of the commissioner. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review. An order denying reconsideration or a written notice specifying the date upon which action will be taken on the petition for reconsideration is not subject to judicial review.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-100-015 Equity and good conscience defined. (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

(a) General health, including disability, competency, and mental or physical impairment;

(b) Education level, including literacy;

(c) Whether there is current income from work or a business;

(d) History of unemployment;

(e) Future earnings potential;

(f) Business structure, if appropriate;

(g) Marital status and number of dependents, including whether other household members are employed;

(h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;

(i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this section, except for the presumption established under (j) of this subsection.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-100-030 Week defined. The term "week" means a period of seven consecutive calendar days beginning on Sunday at ((~~12:01~~)) 12:00 a.m. and ending at ((~~midnight~~)) 11:59 p.m. the following Saturday.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-100-035 Effective date of claim defined. As provided in RCW 50.04.030, an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed, or, when requested, backdated to a calendar week prior to the calendar week in which the application is filed as provided in WAC 192-110-095. This Sunday date is referred to as the "effective date of claim" or "claim effective date."

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-100-070 Conditional payments. (1) A conditional payment is:

(a) Payment issued to you after you have already received benefits but during a period in which the department questions your continued eligibility for benefits((~~,~~)); or

(b) Payment issued when you have provided reasonable evidence of authorization to work in the United States but the department is paying benefits pending verification by the federal government.

(2) Your right to retain such payment is conditioned on the department's finding that you were eligible for benefits during the week(s) in question.

((~~(2)~~)) (3) You are no longer considered to be in continued claim status if you have not claimed benefits (had a break in claim) for four weeks or longer.

((~~(3)~~)) (4) A conditional payment is not considered a "determination of allowance" as provided in RCW 50.20.160 (3).

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-100-075 Domestic partner. For purposes of this title:

(1) "Domestic partner" ((~~or "state registered domestic partner"~~)) means:

(a) Two adults who ((~~meet the requirements of RCW 26.60.030 and have been issued a certificate of state registered~~)) have registered as a domestic partnership ((~~by~~)) with the Washington secretary of state; or

(b) A legal union of two persons of the same sex that was formed in and is legal in any state or jurisdiction.

(2) "Domestic partner" does not include partnerships formed by individuals of the opposite sex except as provided by RCW 26.60.030 or the equivalent law of another state.

NEW SECTION

WAC 192-100-037 Mail. (1) The term "mail" is interchangeable with the term "send," which means:

(a) To send or deliver by means of the postal service or other delivery service; or

(b) To transmit, deliver, or distribute by e-mail or other electronic services.

(2) Subsection (1)(b) of this section does not apply to WAC 192-04-210, which requires mailing through the postal service or other delivery service if not personally served.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-110-005 Applying for unemployment benefits—General. (1) **How do I apply for benefits?** ((~~(a)~~)) You may apply for benefits by:

((~~(i) Calling the unemployment claims center listed in your local telephone directory; or~~

~~(ii)~~)) (a) Using the department's ((~~internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.~~)) online services; or

(b) Calling the unemployment claims center; or

(c) If you have a physical or sensory disability, or are in unusual circumstances that make filing by telephone or internet difficult, the commissioner may authorize other methods of applying for benefits.

(2) **When can I apply?**

(a) You may apply online using the department's online services at any time.

(b) You may apply by telephone (excluding state holidays) during the days and hours designated by the department((~~, even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.~~

~~(b) You may apply on the internet at any time~~)).

(3) ((**~~When is my claim effective?~~** ~~Your claim is effective on the Sunday of the week in which you file it.~~

~~(4)~~)) **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) Social Security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past ((~~two years~~)) eighteen months. Other information may be ((~~requested~~)) required in individual circumstances.

((~~(5)~~)) (4) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks.

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

WAC 192-110-010 Applications for benefits by interstate claimants. (1) **What is an "interstate claimant"?** An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the " paying state." For example:

(a) You are an interstate claimant if you live outside of Washington and file a claim against Washington. Washington will be the paying state on your claim.

(b) You are an interstate claimant if you live in Washington and file a claim against another state. The other state will be the paying state on your claim.

(2) **Where can I apply for benefits?** You can apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military during the past ((~~two years~~)) eighteen months, you must physically be in the state of Washington to apply for benefits against Washington.

(3) **How do I apply for benefits?** ((~~(a)~~)) Use the department's online services or call the unemployment claims ((~~telecenter~~)) center in Washington. If you worked in any state other than Washington within the last ((~~two years, an agent will~~)) eighteen months, the department will provide you with information to help you decide which state will pay your claim.

((~~(i)~~)) (a) If Washington will pay your claim, you may apply using the department's online services or an agent will take your application for benefits over the telephone;

((~~(ii)~~)) (b) If another state will pay your claim, ((~~an agent will tell you~~)) the department will provide you with contact information for that state regarding how to file your claim with that state.

((~~(b) If you worked only in Washington during the previous two years, you may apply for benefits on the internet.~~))

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must con-

tinue with that claim as long as benefits are available before you can establish a new claim against another state. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, you must file it directly with the state that is paying your claim:

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If ((~~mailed~~)) filed using the postal service or shipping service, your appeal will be considered filed on the postmarked or shipping date.

(b) If another state is paying your claim, file your appeal directly with that state.

All appeal hearings will be conducted by the state that is paying your claim. The paying state will notify you of the date, time, and telephone number or location of the hearing.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-110-020 How will the department verify my identity? When you apply for benefits, ((~~we will ask you questions based on information in our records, such as your work history~~)) the information you provide must be sufficient for the department to confirm your identity to its satisfaction.

(1) If we can verify your identity with ((~~these questions~~)) this information, we will file your application for benefits.

(2) If we cannot verify your identity ((~~through questioning~~)), we will ((~~send you a verification form:~~)) request additional verification.

(a) If ((~~you complete and return the verification form to the department, and it~~)) the additional information provides satisfactory evidence of your identity, your claim will be effective based on the date ((~~of your first telephone call;~~)) you first applied for benefits, unless it is backdated as provided in WAC 192-110-095.

(b) If ((~~you do not complete or return the verification form, or it~~)) the additional information does not satisfy the department of your identity, we will deny your benefits.

AMENDATORY SECTION (Amending WSR 10-12-026, filed 5/24/10, effective 6/24/10)

WAC 192-110-050 How do I reopen my claim? (1) If you ((~~do not file a claim for one or more weeks~~)) have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) ((~~If it has been fewer than four weeks since you last claimed, you must~~)) You may reopen your claim:

(i) By using the department's online services; or

(ii) By calling the unemployment claims ((~~telecenter and asking an agent to reopen your claim~~)) center.

(b) ((~~If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet or by calling the unemployment claims telecenter. However, you must do so **before** the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.~~)) You must reopen your claim **before** the end of the week.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department ((~~except that the effective date for any prior week claimed under WAC 192-140-005(4) will be Sunday of that week~~)) to reopen your claim, unless you ask the department to backdate your reopening date to a prior week. The department will not backdate your reopening date unless you show good cause for not reopening your claim earlier, except as provided in WAC 192-140-005.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, ((~~acting on advice directly from a department employee or its agent on whom a reasonable person would rely,~~)) incapacity due to illness or injury, or other serious factors.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or

(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information((~~, and you knew or should have known of your redetermination or appeal rights and failed to exercise them~~)).

AMENDATORY SECTION (Amending WSR 09-15-014, filed 7/2/09, effective 8/2/09)

WAC 192-110-112 Applying for a combined wage claim. (1) **What is a combined wage claim?** A combined wage claim is a claim based on wages earned in two or more states. For purposes of this section, "state" means the fifty states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

(2) **Where can I file a combined wage claim?** You can file a combined wage claim against any state in which you have base period wages and qualify for benefits based on combining those wages with wages from another state(s). The state against which you file your claim will be the paying state.

(3) **What is the paying state?** The "paying state" is the state against which you file your combined wage claim. You must have base period employment in that state and qualify for unemployment benefits under that state's laws using combined employment and wages.

(4) **Can I file a combined wage claim against Washington?** Yes. To file a combined wage claim against Washington, you must have base period wages in Washington which, combined with your wages from another state(s), establish a valid Washington claim. If you file your claim against Washington, Washington will be the paying state.

(5) **Do I have to reside or physically be in Washington to file a combined wage claim?** No. The state where you are a resident is not relevant in deciding the paying state.

(6) **Who decides which state is the paying state for a combined wage claim?** You are responsible for deciding which state will be the paying state. If you are potentially eligible for a combined wage claim and you contact the department((~~, an agent will provide you~~)) using online services or by phone, you will be provided with:

(a) General information about the combined wage program;

(b) Your options for filing a regular or combined wage claim against Washington or another state(s); and

(c) Contact information for other state(s) in which you worked during your base period.

(7) **Am I required to file a combined wage claim?** No. Filing a combined wage claim is voluntary. You may choose to file a claim using only wages from a single state.

NEW SECTION

WAC 192-110-115 May I cancel my claim? (1) You will be allowed to cancel your claim within thirty days of the date you applied for benefits if no payment has been issued to you on the claim. The department will advise you of the advantages and disadvantages of canceling a claim.

(2) At his or her discretion, the commissioner may permit cancellation of a claim beyond thirty days of the date you applied for benefits, but only in extreme and unusual circumstances. The denial of a request to cancel a claim beyond thirty days of the date of application is not subject to appeal.

(3) You will not be allowed to cancel your claim if benefits have been paid on the claim, unless the department filed the claim in error.

(4) As provided in RCW 50.20.160, if the department has denied your benefits before canceling your claim, the denial will remain in effect. The department will not make a new decision based on the same issue in a subsequent claim.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-120-010 Claimant information booklet. (1) The department will publish and post on its web site an information booklet for unemployment insurance claimants that provides basic information on the laws, rules, and procedures for unemployment insurance benefit claims. Single copies of the booklet will be available to the public at no charge.

(2) The department will send claimants who file an application for benefits a link to the booklet by e-mail or other electronic means. If the department does not have the ability or authorization to notify a claimant by e-mail or other electronic means, the department will ((~~mail~~)) send the claimant a written notice containing the link to the web address for the booklet. The department will mail a hard copy of the booklet to any claimant who requests it.

(3) The department will maintain a brief descriptive web address to help claimants locate the booklet online. The link to the booklet will be prominently displayed on the department's web site.

(4) Each claimant is responsible for filing weekly claims and following all instructions as required in the booklet for the duration of the claim unless other specific information is ((~~given~~)) provided to the claimant ((~~in writing~~)) by the department.

(5) The department will assist any person who advises the department that he or she is having difficulty understanding the booklet.

(6) If a claimant does not ask for help in understanding the booklet, he or she will be presumed to understand its contents and held responsible for any failure to act as directed by the booklet.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-020 Presentation of benefit rights. (1) When you file an application for benefits, the department will give you a presentation of benefit rights. At a minimum, the presentation of benefit rights will include information regarding:

(a) Your statement of wages and hours (monetary determination);

(b) Instructions on filing weekly claims;

(c) Reemployment services; and

(d) How eligibility questions are adjudicated.

(2) You will be responsible for filing claims and providing information as directed in the presentation of benefit rights unless other ((~~written~~)) instructions are given to you after the presentation of benefit rights.

(3) If there is a conflict between written and spoken information ((~~given~~)) provided to you, the written information will ((~~apply~~)) prevail.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-030 Will I be told if my eligibility for benefits is questioned? Whenever we have a question regarding whether you (the claimant) are eligible for benefits, we will give you adequate notice before making a decision. "Adequate notice" means we will tell you:

(1) Why we question your eligibility for benefits;

(2) That you have the right to a fact-finding interview about your eligibility for benefits and that the interview will be conducted by telephone except:

(a) When you specifically ask to be interviewed in person((~~,~~)); or

(b) In unusual circumstances where we decide an in-person interview is necessary((:)).

(3) That you can have someone, including an attorney, assist you at the interview;

(4) That you can have witnesses on your behalf, provide evidence, and cross-examine other witnesses or parties;

(5) That, prior to the interview, you may ask for copies of any records or documents we have that we will consider in making a decision about your eligibility for benefits;

(6) The date by which you must reply to the notice (which will be no earlier than five days plus reasonable mailing time ((~~plus five working days~~)), if any); and

(7) That if you do not respond to the ((~~written~~)) notice by the date shown, your benefits may be denied and you may have to repay any benefits already paid to you.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-120-035 How will adequate notice be provided? (((~~1~~))) When you file your weekly claim for benefits by telephone, you will receive a verbal notice if there is a question about your eligibility for benefits. When you file your weekly claim for benefits by ((~~internet~~)) using the department's online services, a statement will be ((~~printed~~)) displayed online that there is a question about your eligibility for benefits. (((~~2) If you do not contact the department by the last working day of the week in which your claim was filed, a written notice will be mailed to your most recent address in our files. The date by which you must reply to this written notice will be no earlier than reasonable mailing time plus five working days, starting from the date your weekly claim for benefits was filed.~~)) You will be provided a minimum of five days, plus reasonable mailing time, if any, to respond to the notice or statement.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-120-050 Conditional payment of benefits. (1) If you are a continued claim recipient and your eligibility for benefits is questioned by the department, you will be conditionally paid benefits without delay for any week(s) for which you file a claim for benefits, until and unless you have been provided adequate notice and an opportunity to be heard.

(2) At your request, we will hold conditional payments when you are eligible for conditional payment under WAC 192-100-070.

(3) Payment will be issued for any payments withheld under subsection (2) of this section if we determine you are eligible for benefits.

(4) Conditional payments will not be made under the conditions described in WAC 192-140-200 and 192-140-210.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-050 Notice of filing of application—RCW 50.20.150. Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be ((~~mailed~~)) sent to the applicant's most recent employer as stated by the applicant. Any employer who receives such a notice and has information which might make the applicant ineligible for benefits ((~~shall~~)) must report this information to the ((~~employment security~~)) department ((~~at the address~~)) as indicated on the notice. The information must be reported within ((~~ten days of~~)) five days, plus reasonable mailing time, if any, beginning on the date the notice was ((~~mailed~~)) sent. If the employer does not reply within ((~~ten days~~)) this time frame, the department may allow benefits to the individual, if he or she is otherwise eligible.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-060 Notice to employer. (1) Whenever an individual files an initial application for unemployment benefits, a notice will be ((~~mailed~~)) sent to:

(a) The claimant's last employer, and

(b) Any prior employer where it has been less than ten weeks since the job separation or the individual has not earned at least ten times his or her weekly benefit amount since the job separation.

(2) Whenever an individual files an initial application for unemployment benefits and a benefit year is established, the department will ((~~mail~~)) send a notice to all base year employers. This notice to base year employers will include information on wages reported and benefit charging related information and will request an employer response if the wage information is incorrect or if the employer wishes to request relief of benefit charging.

(3) Whenever an individual files an initial application for unemployment benefits, the department will ((~~mail~~)) send a notice to any separating employer as provided in WAC 192-320-075. This notice will include information that the employer may be liable for all benefits paid on the claim as provided in RCW 50.29.021 (2)(c).

(4) Whenever an individual files an additional claim for benefits (reopens an existing claim after subsequent employment), the department will ((~~mail~~)) send a notice to the last employer reported by the claimant and to any prior employer from whom the claimant has a potentially disqualifying separation who has not previously been notified.

AMENDATORY SECTION (Amending WSR 14-04-074, filed 1/30/14, effective 3/2/14)

WAC 192-130-065 ((~~Mailing addresses for~~)) Sending the notice to employer. The department will ((~~mail~~)) send notices to employers required by RCW 50.20.150 and WAC 192-130-060 as follows:

(1) The department will ((~~mail~~)) send the notice to the last employer of the claimant in the following order:

(a) If the employer requests that the department ((~~mail~~)) send correspondence related to unemployment benefits to a specific address, the department will ((~~mail the~~)) send a notice to the last employer directly to that address; or

(b) If the employer has notified the department that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the

department will ((~~mail the~~)) send a notice to the last employer directly to that firm; or

(c) If an employer has provided the department with ((~~a mailing~~)) an address for tax purposes, the department will ((~~mail the~~)) send a notice to the last employer directly to that address; or

(d) If the employer has not provided the department with ((~~a mailing~~)) an address, the department will ((~~mail the~~)) send a notice to the last employer to the address provided by the claimant.

(2) The department will ((~~mail the~~)) send a notice to any base year employer who has reported wages to the department to the ((~~employer's mailing~~)) address ((~~of record~~)) provided by the employer for tax purposes.

(3) ((~~The~~)) A notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be ((~~mailed~~)) sent in the order specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-070 ((~~Mailing of~~)) Sending eligibility determinations—RCW 50.20.180. (1) The department will ((~~mail~~)) send an eligibility decision based on a job separation issue to the following:

(a) The last employer, if the claimant was separated from employment for reasons other than lack of work;

(b) A previous employer from whom the claimant has a potentially disqualifying separation as provided in WAC 192-130-060 if the claimant was separated from employment for reasons other than lack of work;

(c) To any employer since the beginning of the claimant's base year who provides information that the claimant was discharged for gross misconduct connected with the work((~~, or whose wage credits are deleted from the claimant's record as a result of the claimant's gross misconduct~~)).

(2) The department will ((~~mail~~)) send an eligibility decision based on an issue other than a separation from employment to an employer if the employer provides relevant information about the claimant's eligibility for a specific week.

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-130-080 Procedure—Separation issues. (1) The department will not make a decision on a separation issue (RCW 50.20.050 or 50.20.066) until both the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, about the separation.

(2) If an employer does not respond to the notice within ((~~ten~~)) five days, plus reasonable mailing time, if any, as required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the employer ((~~mails~~)) sends separation information to the ((~~unemployment claims telecenter identified on the notice~~)) department after the end of the ((~~ten-day~~)) response period, but before the decision has been made, the department will consider that information before making a decision.

(4) If the employer ((~~submits~~)) sends separation information to the department within thirty days after a decision has been ((~~mailed~~)) sent, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the ((~~mailing of~~)) date the notice required by WAC 192-130-060 was sent will be considered a request for relief of benefit charges under RCW 50.29.021.

AMENDATORY SECTION (Amending WSR 15-02-051, filed 1/5/15, effective 2/5/15)

WAC 192-140-005 Filing weekly claims for benefits. (1) **How do I file my weekly claim for benefits?** You may file your claim using the department's ((~~automated systems. The term "automated systems" includes the department's unemployment information and weekly claims telephone line or the department's internet web site. You may also file a paper claim. At the agency's discretion, you may be allowed to file a weekly claim with the assistance of a claims center representative~~)) online services or by calling the department's claims center. If you have a physical or sensory disability or are in unusual circumstances that make filing by telephone or online difficult, the commissioner may authorize other methods of filing a weekly claim.

(2) **When do I file my weekly claim?** You must file a claim for every week ((~~for which~~)) you want to be paid or have counted as your waiting week. Every week begins at ((~~12:01~~)) 12:00 a.m. on Sunday and ends at ((~~midnight~~)) 11:59 p.m. on Saturday. You must file your claim *after* the end of the week(s) you are claiming.

(a) File your claim using online services after 12:00 a.m. Sunday following the week you are claiming. If you file by electronic means, your claim is considered filed on the date of successful electronic transmission.

(b) File your telephone ((~~or internet~~)) claim after ((~~12:01~~)) 12:00 a.m. Sunday, but before 4:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before 4:00 p.m. on the last working day of the week.)

((~~(b) If you file by paper,~~)) (c) File your paper claim anytime Sunday through Saturday following the week you are claiming. ((~~If you file by mail,~~)) Your claim is considered filed on the postmarked date((~~. If you file by fax, your claim is considered filed on the date of receipt~~)) if you mail it.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?**

(a) If you do not claim a week, ((~~you must reopen your claim. See WAC 192-110-050.~~

~~(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the claims center to reopen your claim~~)) and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four

weeks prior to the week in which you contact the department to begin claiming again.

(b) If you ((have received your first payment and not)) do not claim a week, and more than four consecutive weeks have elapsed since you last filed a claim, you ((may claim benefits for any of the four weeks prior to the week in which you contacted the claims center to reopen your claim.

(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these)) must reopen your claim as provided in WAC 192-110-050. The department will not pay you for any unclaimed weeks unless you show good cause for ((not contacting the claims center earlier to reopen your claim)) the late filing of those claims.

(5) **What information do I have to report?** Your claim must include((:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions, the claims center cannot process a claim unless all questions are answered;

(c) Your personal identification number if filing by automated system, your signature if you filed in writing or your verbal authorization if you filed with the assistance of a claims center representative;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) **What happens if I don't provide this information?**)) answers to all the questions. The department cannot process a claim ((filed via automated system)) that does not meet ((the)) this requirement((s of subsection (5) of this section and you will receive instructions to contact the claims center. A written claim that does not meet these requirements is incomplete and the department will return it to you with a request for additional information)).

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-010 ((Personal identification number.)) Systems security. (1) ((The first time you call the unemployment information and weekly claims line to obtain information about your claim or to file a weekly claim for benefits, you must set up a)) Your password or personal identification number (PIN)((. This number)) is your electronic signature on all claims filed ((by telephone)) and its use is equivalent to your signature on written forms.

(2) Security of the password or PIN is your responsibility. You are responsible for any payments made as a result of the use of ((this)) your password or PIN unless you provide evidence showing that the individual using your password or PIN was not authorized to do so. You must establish a new password, or your PIN must be reset if you forget it or if someone else, including an employee of the department, learns ((your PIN)) of it. You are responsible for either:

(a) Accessing the department's online services to establish a new password; or

(b) Contacting the ((unemployment claims telecenter to set up a new PIN or setting up a new PIN using the department's internet site)) department to reset your PIN.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-140-020 Will I be required to report in person? You may be instructed to report in person for any reason the department deems necessary, such as to receive reemployment services. If you do not report in person, you will be ineligible for benefits ((will be denied)) under RCW 50.20.010 (1)(a) for the week unless:

(1) You have returned to full-time work and cannot report in person, or

(2) You can show you had good cause for not reporting in person. "Good cause" is any factor which would cause another person in similar circumstances to be unable to report in person.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-140-030 What happens if I do not report in person when directed? (1) If you do not report in person when directed to do so, and do not provide information to explain why you did not report in person, the department will presume you failed to report in person without good cause and benefits will be denied under RCW 50.20.010(1).

(2) This denial of benefits is for ((definite period of time, which is)) the week or weeks in which you failed to report in person.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-040 What happens if I do not provide details about my employment when filing my weekly claim? (1) The department will presume you are not unemployed under RCW 50.04.310 if you:

(a) Report that you had work and earnings for one or more weeks;

(b) Fail to provide employer name and address; and

(c) Do not respond to a request for information.

(2) Further, the department will presume you are not unemployed under RCW 50.04.310 if:

(a) You report that you will have earnings for a week not yet claimed;

(b) Subsequently claim benefits for the week without providing employer name and address and the amount of earnings; and

(c) Do not respond to a request for information.

(3) The department will ((deny benefits under this section)) presume you are not unemployed based on RCW 50.20.010(1) and 50.04.310. This ((denial applies only to the week(s) in which work and earnings information is incomplete)) presumption will continue until you provide the department with the information necessary to determine

whether you are unemployed within the meaning of the statute.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-070 What happens if I do not establish that I am able to or available for work? (1) If you report that you were not able to work or not available for work in any week or do not report whether you were able to work or were available for work, and do not provide details regarding your ability to or availability for work as requested, the department will presume you are not able or not available for work and benefits will be denied under RCW 50.20.010 (1)(c).

This denial is for ((~~a definite period of time, which is~~)) the week or weeks in which information on your ability to work or availability for work is incomplete.

(2) If you provide information that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed, and you do not provide information regarding your ability to or availability for work, benefits will be denied under RCW 50.20.010 (1)(c).

This denial ((~~is for an indefinite period of time. It~~)) will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-075 What happens if I do not demonstrate that I am actively looking for work? (1) If you report that you were not actively seeking work in any week or do not report whether you made an active search for work and subsequently fail to report complete job search details and other information when requested, the department will presume you are not actively seeking work and your benefits will be denied under RCW 50.20.010 (1)(c).

(2) For the purpose of this section, "complete job search details" includes those elements that may be required ((~~under~~)) by the department as provided in WAC 192-180-015.

(3) This denial is for ((~~a definite period of time, which is~~)) the week or weeks in which your job search information is incomplete.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-080 What happens if I do not comply with a job search directive? (1) If you have been issued a job search directive as provided in WAC 192-180-010, do not report a job search that meets the requirements outlined in the directive, and you do not provide additional job search information as requested or you respond with information that does not meet these requirements, the department will presume you are not actively seeking work as directed and benefits will be denied under RCW 50.20.010 (1)(c) and 50.20.240.

(2) This denial is for ((~~a definite period of time, which is~~)) the week or weeks in which your job search information does not meet the specific requirements of the directive.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-085 What happens if I do not respond to a request for information regarding late claim(s)? (1) If you ask to file a claim late as defined in WAC 192-140-005 and do not respond to a request for an explanation of why the claim was filed late, the department will presume that the claim was filed late without good cause and benefits will be denied under RCW 50.20.010 (1)(b) and WAC 192-140-005.

(2) This denial is for ((~~a definite period of time, which is~~)) the week or weeks that were filed late.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-090 What happens if I do not report for reemployment services as provided in RCW 50.20.010 (1)(e)? The commissioner may direct you in writing to report in person for reemployment services.

(1) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member ((~~in good standing~~)) of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005; or

(c) Within the previous year have completed, or are currently scheduled for or participating in, similar services.

(2) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(3) **((~~Sanctions.~~)) Penalty.** If you have received a directive, and fail to participate in reemployment services during a week, you will be disqualified from benefits for that week unless justifiable cause is demonstrated.

(4) **Justifiable cause.** Justifiable cause for failure to participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to participate. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions precluding safe travel.

Reasons for absence may be verified. In all such cases, your ability to or availability for work is in question.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-100 What happens if I do not respond to a request for information about a discharge from work? (1) If you do not respond to a request for information about a discharge from work and if you:

(a) Have not given the department enough information to identify or contact the employer, the department will presume the employer discharged you for misconduct connected with your work. The department will deny benefits under RCW 50.20.066.

(b) Have given the department enough information to contact the employer, the department will not deny benefits unless a preponderance of evidence shows that you were discharged for misconduct connected with your work or the separation was for another disqualifying reason.

(2) If benefits are denied due to misconduct, the denial ((~~is for an indefinite period of time and~~)) will continue for ten weeks and until you earn ten times your weekly benefit amount in employment that is covered by Title 50 RCW.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-120 What happens if I do not provide information regarding attendance at school? (1) If you or another party notifies the department that you are in school and you do not respond to a request for information regarding school attendance, the department will presume that you are registered for academic instruction of 12 or more credit hours and have a limited attachment to the labor market, and are not available for work. Benefits will be denied under RCW 50.20.095 ((~~and 50.20.010 (1)(c)~~)).

(2) This denial of benefits ((~~is indefinite in nature and~~)) will continue until you establish that you are eligible under RCW 50.20.095 ((~~and 50.20.010 (1)(c)~~)).

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-130 What happens if I do not respond to a request for information about holiday ((~~or~~)), vacation ((~~pay~~)), sick, or other paid time off? (1) The department will presume you are not unemployed as provided in RCW 50.04.310 if you report that you received holiday ((~~or~~)), vacation, sick, or other paid time off pay and the respective amount paid, and do not respond to a request for specific information about the holiday ((~~or~~)), vacation ((~~pay~~)), sick, or other paid time off.

(2) ((~~If you report that you will have holiday or vacation pay for a week not yet claimed and subsequently claim benefits for the week without providing employer name and address and the amount of payment, and do not respond to a request for information, the department will presume you are not unemployed as provided in RCW 50.04.310.~~

(~~3~~))) The department will deny benefits under RCW 50.20.010(1) and 50.04.310. This denial applies only to the week(s) in which holiday ((~~or~~)), vacation, paid time off, or sick pay information is incomplete.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-140 What happens if I fail to respond to a request for information about reasonable assurance to return to work in educational employment? (1) If your eligibility for benefits is based on services to an educational institution, ((~~your employer has provided information that~~)) evidence shows you have reasonable assurance of returning to work after the school holiday or break, and you do not respond to a request for information about reasonable assurance, the department will presume that such assurance exists.

(2) The department will deny benefits under RCW 50.44.050. This denial applies to the period between academic years or terms, and during holiday or vacation periods.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-140-145 What happens if I do not respond to a request for ((~~pension~~)) information about my retirement pay? (1) The department will presume you are receiving ((~~a pension~~)) retirement pay in an amount greater than your weekly benefit amount and contributed to only by a base period employer if:

(a) You report that you have applied for ((~~a~~)) retirement ((~~pension~~)) pay or your ((~~pension~~)) retirement pay has changed since your last claim; and

(b) You do not respond to the question concerning ((~~pension~~)) retirement pay information when filing your weekly claim.

(2) The department will ((~~deny~~)) reduce benefits under RCW 50.04.323. This ((~~denial~~)) reduction will continue until you provide the information showing that you are ((~~not ineligible~~)) eligible for benefits under RCW 50.04.323.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be reduced under RCW ((~~50.20.010 (1)(c) and~~)) 50.20.130 without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work on one or two days of a week or weeks being claimed; and

(b) The day or days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This ((~~denial is for a definite period of time and~~)) reduction applies only to the day or days for which ((~~you specifically indicate~~)) available information shows you are ineligible for benefits.

(2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and

(b) The days to which this condition applies are normal working days in your regular occupation; and

(c) The information supplied clearly supports this finding.

This denial ((~~for a definite period of time and~~)) applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.

(3) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial ((~~is for an indefinite period of time. It~~)) will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

(4) ((~~If you file a weekly claim with information clearly stating that you do not intend to claim benefits for the week or weeks, benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview.~~

~~This denial is for a specific period of time, which is the week or weeks for which you specifically indicate you do not intend to claim benefits.~~

~~(5)~~)) Any denial of benefits under subsections (2) and (3) of this section will be issued without delay. The department will not issue a written decision when benefits are reduced under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-140-210 What happens if I return to full-time work or report hours worked consistent with full-time work? If you report that you have returned to full-time work or report hours worked that are consistent with full-time work for that occupation, this information is sufficient to find that you are no longer an unemployed individual as defined in RCW 50.04.310. ((~~This denial is for a specific period of time, which is the week or weeks for which you report full-time work or hours consistent with full-time work.~~))

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status? If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed ((~~as defined in~~)) and benefits will be denied under RCW 50.04.310 ((~~and benefits will be denied under RCW 50.20.010~~)). This denial ((~~is for an indefinite period of time and~~)) will continue until you show you are unemployed as defined under RCW 50.04.310.

AMENDATORY SECTION (Amending WSR 07-23-129, filed 11/21/07, effective 1/1/08)

WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011. (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) ((~~during the first payable week~~)) after all wages for the claimant on the current claim have been received. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 13-02-008, filed 12/19/12, effective 1/19/13)

WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program? (1) Any ((~~net~~)) income you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(a) Net income based on self-employment must be reported as provided in WAC 192-190-105.

(b) Gross income from any other source must be reported as earnings.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-010 Will I be notified about a potential overpayment? (1) If a potential overpayment exists, the department will provide you with a written overpayment advice of rights explaining the following:

(a) The reasons you may have been overpaid;

(b) The amount of the possible overpayment as of the date the notice is ((~~mailed~~)) sent;

(c) The fact that the department will collect overpayments as provided in WAC 192-230-100;

(d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;

(e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries;

(f) An explanation that if you are not at fault, you may request a waiver of the overpayment; and

(g) A statement that you have ((~~ten~~)) five days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether you are at fault. If you do

not provide the information within ((~~ten days~~)) this time frame, the department will make a decision based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed? (1) RCW 50.20.070 provides dollar penalties when fraud is committed and increased disqualification periods when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the criteria in this section.

(2) Once the department ((~~mails~~)) sends a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the ((~~mailing~~)) date ((~~of~~)) the decision is sent will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is ((~~mailed~~)) sent on June 1 for weeks claimed on April 30. On July 1, a decision is ((~~mailed~~)) sent assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was ((~~mailed~~)) sent.

(3) The department will treat any fraud for weeks filed more than fourteen days after the ((~~mailing~~)) date ((~~of~~)) a prior fraud decision is sent as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is ((~~mailed~~)) sent assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. In addition to the fifteen percent penalty, the disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks and a penalty of fifteen percent beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

AMENDATORY SECTION (Amending WSR 13-24-012, filed 11/21/13, effective 12/22/13)

WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision? (1) The department will ((~~issue~~)) send a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and a fifteen percent dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is ((~~mailed~~)) sent on August 1 and benefits are denied for the following twenty-six weeks and a fifteen percent penalty is assessed. On August 10, another fraud decision is ((~~mailed~~)) sent which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the twenty-six week denial period begins with ((~~the~~)) August 10 ((~~mailing~~)), the date the second fraud decision is sent.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-060 Will I be notified of my right to appeal the overpayment? (1) The department will ((~~notify~~)) send you and all interested employers ((~~in writing~~)) information about the overpayment assessment and the right to appeal any of the following elements of the assessment:

(a) The reason for the overpayment.

(b) The amount of the overpayment.

(c) The finding of fault or nonfault.

(d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

(a) An employer that provides information to the department which results in an overpayment assessment.

(b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the

department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the ((~~10 day~~)) response deadline indicated in the notice, which will be no less than five days plus reasonable mailing time, if any. If you do not provide the information ((~~within 10 days~~)) by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-010 Repayment terms defined. For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement ((~~mailed to your last known address~~)).

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-230-020 How are cash payments and offsets applied to my overpayment? (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1) of this section, the department will apply cash payments to the outstanding balance in the following order:

(a) Court costs including, but not limited to, filing fees and surcharges paid to the court for their official services, and surcharges and fees collected by the court for distribution to other programs or funds. It does not, however, apply to surcharges paid to the court under RCW 40.14.027 which are applied under (f) of this subsection.

(b) Interest.

(c) Penalties based on fraud.

(d) Charges for payments dishonored by nonacceptance or nonpayment.

(e) Overpaid benefits.

((~~(e)~~)) (f) Surcharge assessed under RCW 40.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

(4) The department will charge twenty-five dollars for each dishonored payment you submit. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-030 How is the minimum payment calculated? The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is ((~~mailed~~)) sent, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is ((~~mailed~~)) sent, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-040 When are interest charges added to my overpayment? (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue

while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) In addition to the principal amount, interest will accrue based on the total of the overpayment including, but not limited to, interest, penalties, court costs, charges for dishonored payments, and related charges or fees.

(5) If the overpayment includes both fraud and nonfraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

(((~~(5)~~))) (6) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

(((~~(6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.~~))) (7) Interest is calculated on a monthly cycle as follows:

(a) For fraud overpayments, interest accrues beginning on the date the determination of fraud is effective.

(b) For nonfraud overpayments, interest accrues immediately, beginning after the due date.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-230-090 May I repay an overpayment by offset against my benefits? (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. If the new balance available on your current benefit year is greater than the balance of your overpayment, you can choose the amount of benefits to be offset from each payment. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-100 What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC 192-230-030, the principal amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, ((~~and~~)) court costs, and charges for dishonored payments will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim ((~~cancelled~~)) canceled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of ((~~cancelling~~)) canceling an existing claim to file a new claim. See WAC 192-110-115.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC 192-230-030. If you have missed a portion of two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim((~~. However, you may request the overpayment be repaid at~~)), or such other percentage you request, up to one hundred percent of benefits payable ((~~for each week you claim~~)). The ((~~fifty~~)) percent ((~~deduction~~)) deducted is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-110 May I negotiate with the department to repay less than the full amount of my benefit overpayment?—RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (4) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you

previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(4) A negotiated settlement for less than the full amount owed will not be considered when:

(a) The overpayment decision was issued by a state other than Washington; or

(b) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(5) The department's decision to accept or reject a settlement offer is not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer ((~~at a later date~~)) if your circumstances change.

AMENDATORY SECTION (Amending WSR 14-04-073, filed 1/30/14, effective 3/2/14)

WAC 192-230-130 How do I make a negotiated settlement offer? (1) You may contact the department's unemployment benefits collection unit ((~~in writing or by telephone~~)) and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(2) Settlement offers may also be made by authorized department staff.

AMENDATORY SECTION (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

WAC 192-240-015 How to apply for extended benefits. File your application for extended benefits by using the department's online services or by placing a telephone call to ((~~an unemployment claims telecenter~~)) the department. The commissioner can authorize other filing methods in unusual circumstances or for the convenience of the department.

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-025 What are the requirements for employers with an approved shared work plan? (1) **What information am I responsible for providing to my employees?** When your shared work plan is approved, you are responsible for telling your affected employees:

(a) They are approved for participation in the shared work program;

(b) How to apply for shared work benefits; and

(c) How to file their weekly claims.

(2) **What employee fringe benefits do I have to provide while participating in the shared work program?**

(a) You must continue to provide your affected employees with health benefits as though their weekly benefits had not been reduced.

(b) You must continue to provide your affected employees with retirement benefits for defined contribution and defined benefit pension plans under the Internal Revenue Service code. You must maintain these benefits for your shared work employees as though their weekly hours had not been reduced.

(c) You must continue to provide paid vacation, holiday, and sick leave to your affected employees under the same terms and conditions as before their hours were reduced.

(d) If health, retirement, or leave benefits change for your other employees, you can change them for your shared work employees as well.

(e) Other benefits offered to your employees, such as long-term disability and life insurance, are optional. You may choose to provide these benefits but they are not a requirement for participation in the shared work program.

(3) **What is required if the business name is changed?** You must report any change in your business name to the shared work program unit within ten working days.

(4) **What is required if the designated employer representative is changed?** You must notify the shared work unit of the change within ten working days.

(5) **Can I modify an approved shared work plan?** You may request to add additional employees or units of your business after the approved plan start date. Adding new employees or units to an approved plan is subject to the same eligibility review that applied to the original plan. You must notify the shared work unit of any change to the information on your application in writing within ten working days.

(6) **What other information am I responsible for giving the department?** In addition to the application for participation in the program, you are responsible for verifying the information on the shared work payments report sent by the department. You must report any discrepancies to the shared work unit ((~~in writing~~)) by using the department's online services or by fax within ten working days.

(7) **How many shared work plans may I have?**

(a) You may have more than one shared work plan. We will review each shared work plan application to see if it meets the eligibility requirements. Even if a previous plan was approved, this does not mean subsequent plans are automatically approved.

(b) If your business is approved for a shared work plan, but your employees do not claim shared work benefits during the life of the plan, it will still be treated as one plan.

(c) The commissioner may, at his or her discretion, deny approval of subsequent plans.

(8) **What if my ESD number changes?** You must report the change to the shared work unit within ten working days. A change in ESD number represents a change in employer and the existing shared work plan will be canceled. The successor employer may submit a new shared work plan application to the department for review.

AMENDATORY SECTION (Amending WSR 14-06-019, filed 2/24/14, effective 3/27/14)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the informational notice ((~~mailed or e-mailed~~)) sent to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the informational notice is considered your notification

of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-070 Modifying a training plan. (1) You must notify the department by using the department's online services or by mail prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

(a) Your course of study or major;

(b) The educational institution;

(c) The projected start or end dates for the training; or

(d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b) ((-)) through (g). Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), if you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and are subject to recovery under RCW 50.20.190.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages. (1) If an employer does not report hours worked and a former employee applies for benefits, the department will ((~~divide the wages earned~~)) estimate the hours worked as follows:

(a) For Washington reportable wages, the department will divide the reported wages by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked;

(b) For all out-of-state wages, the department will divide the reported wages by the federal minimum wage to estimate the hours worked.

(2) If the employer later provides the actual hours worked, the department will recalculate the former employee's claim.

(3) If the claim is voided or benefits are reduced as a result of the recalculation, the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

NEW SECTION

WAC 192-320-077 In which quarter will the department charge employers for unemployment benefits paid to claimants? Benefits will be charged to the quarter containing the first day of the week claimed, regardless of when the department actually pays the claimant for the week claimed.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(((c))) (b) and 50.29.021 (3)(a). (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (((2))) (3) of this section.

(2) When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced due to a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except as provided in subsection (3) of this section.

(3) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

(a) In another state;

(b) From a local government employer;

(c) From the federal government; or

(d) From any branch of the United States military.

WSR 16-15-080
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed July 19, 2016, 11:39 a.m.]

Original Notice.

Expedited Rule Making—Proposed notice was filed as WSR 16-07-013.

Title of Rule and Other Identifying Information: Adoption of a new rule in chapter 192-04 WAC, Practice and procedure for appeals related to unemployment benefits and taxes, the new rule allows the option for the commissioner's review office (CRO) to hold evidentiary hearings on whether a petition for review (PFR) was filed late with good cause.

Hearing Location(s): Employment Security Department (ESD), 212 Maple Park Avenue, Maple Leaf Conference Room, 2nd Floor, Olympia, WA, on August 23, 2016, at 9:00 a.m.

Date of Intended Adoption: August 26, 2016.

Submit Written Comments to: Juanita Myers, ESD, P.O. Box 9046, Olympia, WA 98507, e-mail jmyers@esd.wa.gov, fax (360) 902-9605, by August 22, 2016.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, state EO officer by August 22, 2016, TTY 711 or (360) 902-9354.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, when a PFR is filed late, the CRO remands the matter to the office of administrative hearings (OAH) to conduct a short evidentiary hearing as to why the PFR was late. OAH does not take jurisdiction and does not determine whether the untimely filing was for good cause. OAH gathers the facts as to why the PFR was late and returns the hearing record to the CRO to determine good cause.

The proposed rule will eliminate the need for the CRO to remand the issue of good cause for the untimely filed PFR to OAH for an evidentiary hearing. Since the purpose of the evidentiary hearing is solely to gather the facts regarding why the petition was late, the CRO would have the ability to conduct the hearing. The determination of whether the petitioner had good cause for filing late is not changed; it remains with the CRO.

Reasons Supporting Proposal: The current process requiring remand to OAH creates a significant delay in the review process. It takes OAH an average of fifty days to conduct the evidentiary hearing and return the hearing record to the CRO. The average time frame for the CRO to complete the review process is fifteen days. Petitioners will receive their decisions much more quickly and, if unemployment benefits are allowed, the hardship on the individual due to today's extensive turnaround time will be alleviated. In addition, PFRs that the CRO ordinarily dismisses could get a short evidentiary hearing, providing better access to justice for petitioners.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.32.075 and 50.32.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ESD, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Don Westfall, Olympia, (360) 570-6960.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact to business, other than providing individuals appealing a decision of OAH a more efficient process.

A cost-benefit analysis is not required under RCW 34.05.328. The change is budget neutral for the department, and imposes no costs on the regulated community.

Lisa Marsh
Deputy Commissioner

NEW SECTION

WAC 192-04-095 Untimely petition for review—Commissioner's hearing. When a petition for review is untimely filed the commissioner may, upon the issuance of proper notice to all interested parties, conduct an evidentiary hearing to determine if the petition for review was filed late with good cause. If the evidence establishes that the petition for review was late filed with good cause as set out in RCW 50.32.075 and WAC 192-04-090, the commissioner has jurisdiction to review the matter under RCW 50.32.080. If good cause for the late filed petition for review is not established, the petition for review will be dismissed under RCW 50.32.070.

WSR 16-15-085
PROPOSED RULES
OLYMPIC REGION CLEAN AIR AGENCY
[Filed July 19, 2016, 3:15 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations: Rule 1.11 Federal Regulation Reference Date; Rule 6.1 Notice of Construction Required; Rule 6.1.1 Notice of Intent to Operate; Rule 8.14 Adoption of Federal New Source Performance Standards (NSPS); Rule 8.15 Adoption of National Emissions Standards for Hazardous Air Pollutants (NESHAP); Rule 8.16 Wood Fired Boilers; Rule 8.17 Adoption of National Emissions Standards for Hazardous Air Pollutants for Source Categories; and, Rule 8.18 Adoption of Federal Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on September 14, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail mark.goodin@orcaa.org, fax (360) 491-6308, by September 9, 2016.

Assistance for Persons with Disabilities: Contact Dan Nelson by September 2, 2016, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to adopt by reference the majority of federal air regulations from 40 C.F.R. Parts 60, 61 and 63, and Section 2.18 of 40 C.F.R. Part 65. This will provide ORCAA authority to enforce these federal air regulations through its own local regulations. Currently, ORCAA's authority to enforce these regulations is provided through WAC 173-400-115 and 173-400-075 respectively for the new source performance standards under 40 C.F.R. Part 60 and NESHAP under 40 C.F.R. Parts 61, 63 and 65. The regulations excluded from the list of proposed regulations to be adopted are those enforced exclusively by other agencies like the Washington departments of ecology and health, emissions guidelines for states or regulations that have no potential impacts on air quality in ORCAA's jurisdiction.

Reasons Supporting Proposal: Adopting by reference the federal air regulations from 40 C.F.R. Parts 60, 61 and 63 into ORCAA's local regulations will provide ORCAA more control over the federal air regulations it enforces. It will allow ORCAA to adopt and enforce its own unique list of federal air regulations instead of relying on the list of regulations adopted by ecology. It will also allow ORCAA to be in control of updating the effective date of the federal regulation adoptions, which is necessary to maintain current versions of the federal regulations adopted. In addition, adoption by reference is a prerequisite before primary enforcement authority over a federal air regulation can be delegated to a state or local agency by the Environmental Protection Agency (EPA). ORCAA intends to be the primary enforcement authority over the federal air regulations adopted by reference and will seek delegation of these regulations from EPA. As the primary enforcement authority ORCAA would be in charge of key enforcement decisions and compliance reports would be required to be sent directly to ORCAA instead of both EPA and ORCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Goodin, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

July 19, 2016
Francea L. McNair
Executive Director

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 16-16 issue of the Register.

WSR 16-15-091
PROPOSED RULES
CRIMINAL JUSTICE TRAINING COMMISSION
[Filed July 20, 2016, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-107.

Title of Rule and Other Identifying Information: WAC 139-05-300 Requirement for in-service training.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), Room E-154, 19010 1st Avenue South, Burien, WA 98148, on September 14, 2016, at 10 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Sonja Peterson, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail speterson@cjtc.state.wa.us, fax (206) 835-7313 by September 2, 2016.

Assistance for Persons with Disabilities: Contact Sonja Peterson, rules coordinator, by September 12, 2016, TTY (206) 835-7300 or (206) 835-7356.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes establish clarification to the extension provision and gives the WSCJTC auditor the authority to make decisions regarding exceptions under extenuating circumstances when the employing agency has made every reasonable effort to meet

compliance; therefore, aiding the stakeholder agencies in obtaining compliance with the rule.

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, Implementation, and Enforcement: Leanna Bidinger, Burien, Washington, (206) 835-7307.

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. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

July 20, 2016
Sonja Peterson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-042, filed 9/10/15, effective 10/11/15)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2006, for incumbent officers.

(b) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(2) Effective January 1, 2016, every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of twenty-four hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve peace officer/tribal peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic reserve law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may ((~~approve~~)) request an extension of three months for peace officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three month extension under this provision provides the individuals named until March 31st to complete the mandated twenty-four hours.

(d) Any training obtained during this three month extension only counts towards the previous year being audited.

(5) The commission auditor may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

WSR 16-15-101
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed July 20, 2016, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-071.

Title of Rule and Other Identifying Information: WAC 182-535-1079 Dental-related services—General, 182-535-1080 Dental-related services—Covered—Diagnostic, 182-535-1082 Dental-related services—Covered—Preventative services, 182-535-1084 Dental-related services—Covered—Restorative services, 182-535-1088 Dental-related services—Covered—Periodontic services, 182-535-1090 Dental-related services—Covered—Prosthodontics (removable), 182-535-1092 Dental-related services—Covered—Maxillofacial prosthetic services, 182-535-1094 Dental-related services—Covered—Oral and maxillofacial surgery services, 182-535-1098 Dental-related services—Covered—Adjunctive general services, 182-535-1099 Dental-related services for clients of the developmental disabilities administration of the department of social and health services, and 182-535-1220 Obtaining prior authorization for dental-related services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_

to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 23, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 24, 2016.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on August 23, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by August 19, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to add a cross-reference in regards to documentation of client's dental records, to clarify limitations of covered services, and to clarify the time period that an authorization is valid. Other housekeeping changes were made to improve language.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: April Minton, P.O. Box 45511, Olympia, WA 98504-5511, (360) 725-1590.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

July 20, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1079 Dental-related services—General. (1) Clients described in WAC 182-535-1060 are eligible to receive the dental-related services described in this chapter, subject to coverage limitations, restrictions, and client age requirements identified for a specific service. The medicaid agency pays for dental-related services and procedures provided to eligible clients when the services and procedures:

(a) Are part of the client's dental benefit package;

(b) Are within the scope of an eligible client's Washington apple health (((~~WAH~~))) program;

(c) Are medically necessary;

(d) Meet the agency's prior authorization requirements, if any;

(e) Are documented in the client's dental record in accordance with chapter 182-502 WAC and meet the department of health's requirements in WAC 246-817-305 and 246-817-310;

(f) Are within accepted dental or medical practice standards;

(g) Are consistent with a diagnosis of a dental disease or dental condition;

(h) Are reasonable in amount and duration of care, treatment, or service; and

(i) Are listed as covered in the agency's rules and published billing instructions and fee schedules.

(2) For orthodontic services, see chapter 182-535A WAC.

(3) The agency requires site-of-service prior authorization, in addition to prior authorization of the procedure, if applicable, for nonemergency dental-related services performed in a hospital or an ambulatory surgery center when:

(a) A client is not a client of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099;

(b) A client is age nine ((~~years of age~~)) or older;

(c) The service is not listed as exempt from the site-of-service authorization requirement in the agency's current published dental-related services fee schedule or billing instructions; and

(d) The service is not listed as exempt from the prior authorization requirement for deep sedation or general anesthesia (see WAC 182-535-1098 (1)(c)(v)).

(4) To be eligible for payment, dental-related services performed in a hospital or an ambulatory surgery center must be listed in the agency's current published outpatient fee schedule or ambulatory surgery center fee schedule. The claim must be billed with the correct procedure code for the site-of-service.

(5) Under the early periodic screening and diagnostic treatment (EPSDT) program, clients age twenty ((~~years of age~~)) and younger may be eligible for dental-related services listed as noncovered.

(6) The agency evaluates a request for dental-related services that are:

(a) In excess of the dental program's limitations or restrictions, according to WAC 182-501-0169; and

(b) Listed as noncovered, according to WAC 182-501-0160.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1080 Dental-related services—Covered—Diagnostic. Clients described in WAC 182-535-1060 are eligible to receive the dental-related diagnostic services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Clinical oral evaluations.** The medicaid agency covers the following oral health evaluations and assessments, per client, per provider or clinic:

(a) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(b) Limited oral evaluations as defined in WAC 182-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client on the same day. The limited oral evaluation:

(i) Must be to evaluate the client for a:

(A) Specific dental problem or oral health complaint;

(B) Dental emergency; or

(C) Referral for other treatment.

(ii) When performed by a denturist, is limited to the initial examination appointment. The agency does not cover any additional limited examination by a denturist for the same client until three months after a removable prosthesis has been delivered.

(c) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(d) Limited visual oral assessments as defined in WAC 182-535-1050, ((~~up to two per year~~)) once every six months only when the assessment is:

(i) Not performed in conjunction with other clinical oral evaluation services; and

(ii) Performed by a licensed dentist or dental hygienist to determine the need for sealants or fluoride treatment ((~~and/or~~)) or when triage services are provided in settings other than dental offices or clinics((~~; and~~

~~(iii) Provided by a licensed dentist or licensed dental hygienist~~)).

(2) **Radiographs (X rays).** The agency:

(a) Covers radiographs per client, per provider or clinic, that are of diagnostic quality, dated, and labeled with the client's name. The agency requires:

(i) Original radiographs to be retained by the provider as part of the client's dental record; and

(ii) Duplicate radiographs to be submitted:

(A) With requests for prior authorization; or

(B) When the agency requests copies of dental records.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series once in a three-year period for clients age fourteen ((~~years of age~~)) and older only if the agency has not paid for a panoramic radiograph for the same client in the same three-year period. The intraoral complete series includes at least fourteen to twenty-two periapical and posterior bitewings. The agency limits reimbursement for all radiographs to a total payment of no more than payment for a complete series.

(d) Covers medically necessary periapical radiographs for diagnosis in conjunction with definitive treatment, such as root canal therapy. Documentation supporting medical necessity must be included in the client's record.

(e) Covers an occlusal intraoral radiograph, per arch, once in a two-year period, for clients age twenty ((~~years of age~~)) and younger.

(f) Covers a maximum of four bitewing radiographs once every twelve months.

(g) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the agency has not paid for an intraoral complete series for the same client in the same three-year period.

(h) Covers one preoperative and postoperative panoramic radiograph per surgery without prior authorization. The agency considers additional radiographs on a case-by-case basis with prior authorization. For orthodontic services, see chapter 182-535A WAC.

(i) Covers one preoperative and postoperative cephalometric film per surgery without prior authorization. The agency considers additional radiographs on a case-by-case basis with prior authorization. For orthodontic services, see chapter 182-535A WAC.

(j) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

(k) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the agency.

(3) **Tests and examinations.** The agency covers the following for clients who are age twenty ((~~years of age~~)) and younger:

(a) One pulp vitality test per visit (not per tooth):

(i) For diagnosis only during limited oral evaluations; and

(ii) When radiographs ((~~and/or~~)) or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the agency.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1082 Dental-related services—Covered—Preventive services. Clients described in WAC 182-535-1060 are eligible for the dental-related preventive services listed in this section, subject to coverage limitations and client-age requirements identified for a specific service.

(1) **Dental prophylaxis.** The medicaid agency covers prophylaxis as follows. Prophylaxis:

(a) Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary or permanent dentition.

(b) Is limited to once every:

(i) Six months for clients age eighteen ((~~years of age~~)) and younger;

(ii) Twelve months for clients age nineteen ((~~years of age~~)) and older; or

(iii) Four months for a client residing in a nursing facility.

(c) Is reimbursed only when the service is performed:

(i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients from age thirteen ((~~to~~)) through eighteen ((~~years of age~~));

(ii) At least twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients age nineteen ((~~years of age~~)) and older; or

(iii) At least six months after periodontal scaling and root planing, or periodontal maintenance services for clients who reside in a nursing facility.

(d) Is not reimbursed ((~~for~~)) separately when performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Is covered for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to (a), (c), and (d) of this subsection and WAC 182-535-1099.

(2) **Topical fluoride treatment.** The agency covers the following per client, per provider or clinic:

(a) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age six ((~~years of age~~)) and younger, ((~~up to three times within a twelve-month period~~)) every four months.

(b) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients from age seven through eighteen ((~~years of age, up to two times~~)), every six months within a twelve-month period.

(c) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, ((~~up to three times~~)) every four months within a twelve-month period during orthodontic treatment.

(d) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients age nineteen ((~~years of age~~)) and older, once within a twelve-month period.

(e) Fluoride rinse, foam or gel, fluoride varnish, including disposable trays, for clients who reside in alternate living facilities as defined in WAC 182-513-1301, ((~~up to three times~~)) every four months within a twelve-month period.

(f) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

(g) Topical fluoride treatment for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(3) **Oral hygiene instruction.** Includes ((~~individualized~~)) instruction for home care such as tooth brushing technique, flossing, and use of oral hygiene aids. The agency covers individualized oral hygiene instruction, per client, as follows:

(a) For clients age eight ((~~years of age~~)) and younger. For clients age nine ((~~years of age~~)) and older, oral hygiene instruction is included as part of the global fee for oral prophylaxis.

(b) Once every six months((~~, up to two times~~)) within a twelve-month period.

(c) Only when not performed on the same date of service as prophylaxis or within six months from a prophylaxis by the same provider or clinic.

(d) Only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(4) **Tobacco cessation counseling for the control and prevention of oral disease.** The agency covers tobacco cessation counseling for pregnant women only. See WAC 182-531-1720.

(5) **Sealants.** The agency covers:

(a) Sealants for clients age twenty ((~~years of age~~)) and younger and clients any age of the developmental disabilities administration of DSHS.

(b) Sealants only when used on a mechanically ((~~and/or~~)) or chemically prepared enamel surface.

(c) Sealants once per tooth:

(i) In a three-year period for clients age twenty ((~~years of age~~)) and younger; and

(ii) In a two-year period for clients any age of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(d) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

(e) Sealants on noncarious teeth or teeth with incipient caries.

(f) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

(g) Sealants are included in the agency's payment for occlusal restoration placed on the same day.

(h) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.

(6) **Space maintenance.** The agency covers:

(a) One fixed unilateral space maintainer per quadrant or one fixed bilateral space maintainer((~~s~~)) per arch, including recementation, for missing primary molars A, B, I, J, K, L, S, and T, ((~~subject to the following~~)) when:

(i) ((~~Only when there is~~)) Evidence of pending permanent tooth eruption((~~.~~)) exists; and

(ii) ((~~Only one space maintainer is covered per quadrant.~~)) The service is not provided during approved orthodontic treatment.

(b) Replacement space maintainers ((~~are covered only~~)) on a case-by-case basis ((~~and~~)) when prior authorized.

((~~(b)~~)) (c) The removal of fixed space maintainers when removed by a different provider. Space maintainer removal is allowed once per ((~~quadrant~~)) appliance.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

WAC 182-535-1084 Dental-related services—Covered—Restorative services. Clients described in WAC 182-535-1060 are eligible for the dental-related restorative services listed in this section, subject to coverage limitations, restrictions, and client age requirements identified for a specific service.

(1) **Amalgam and resin restorations for primary and permanent teeth.** The medicaid agency considers:

(a) Tooth preparation, acid etching, all adhesives (including bonding agents), liners and bases, polishing, and curing as part of the restoration.

(b) Occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the ((~~amalgam~~)) restoration.

(c) Restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.

(2) **Limitations for all restorations.** The agency:

(a) Considers multiple restoration involving the proximal and occlusal surfaces of the same tooth as a multisurface restoration, and limits reimbursement to a single multisurface restoration.

(b) Considers multiple restorative resins, flowable composite resins, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one-surface restoration.

(c) Considers multiple restorations of fissures and grooves of the occlusal surface of the same tooth as a one-surface restoration.

(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants. (See WAC 182-535-1082(4) for sealant coverage.)

(e) Reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.

(f) Covers only one buccal and one lingual surface per tooth. The agency reimburses buccal or lingual restorations, regardless of size or extension, as a one-surface restoration.

(g) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial or distal) when performed on posterior teeth or the incisal surface of anterior teeth.

(h) Does not pay for replacement restorations within a two-year period unless the restoration has an additional adjoining carious surface. The agency pays for the replacement restoration as one multisurface restoration ((~~per client, per provider or clinic~~)). The client's record must include X rays ((~~and~~)) or documentation supporting the medical necessity for the replacement restoration.

(3) **Additional limitations on restorations on primary teeth.** The agency covers:

(a) A maximum of two surfaces for a primary first molar. (See subsection (6) of this section for a primary first molar that requires a restoration with three or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(b) A maximum of three surfaces for a primary second molar. (See subsection (6) of this section for a primary posterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth.

(c) A maximum of three surfaces for a primary anterior tooth. (See subsection (6) of this section for a primary anterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth after three surfaces.

(d) Glass ionomer restorations for primary teeth, only for clients age five ((~~years of age~~)) and younger. The agency pays for these restorations as a one-surface, resin-based composite restoration.

(4) **Additional limitations on restorations on permanent teeth.** The agency covers:

(a) Two occlusal restorations for the upper molars on teeth one, two, three, fourteen, fifteen, and sixteen if, the restorations are anatomically separated by sound tooth structure.

(b) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars. The agency allows a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen.

(c) A maximum of six surfaces per tooth for resin-based composite restorations for permanent anterior teeth.

(5) **Crowns.** The agency:

(a) Covers the following indirect crowns once every five years, per tooth, for permanent anterior teeth for clients age fifteen ((~~to~~)) through twenty ((~~years of age~~)) when the crowns meet prior authorization criteria in WAC 182-535-1220 and the provider follows the prior authorization requirements in (c) of this subsection:

(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and

(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.

(b) Considers the following to be included in the payment for a crown:

(i) Tooth and soft tissue preparation;

(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The agency covers a one-surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;

(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;

(iv) Packing cord placement and removal;

(v) Diagnostic or final impressions;

(vi) Crown seating (placement), including cementing and insulating bases;

(vii) Occlusal adjustment of crown or opposing tooth or teeth; and

(viii) Local anesthesia.

(c) Requires the provider to submit the following with each prior authorization request:

(i) Radiographs to assess all remaining teeth;

(ii) Documentation and identification of all missing teeth;

(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;

(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and

(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.

(d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.

(6) **Other restorative services.** The agency covers the following restorative services:

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary anterior teeth once every three years only for clients age twenty ((~~years of age~~)) and younger as follows:

(i) For age((~~s~~)) twelve and younger without prior authorization if the tooth requires a four or more surface restoration; and

(ii) For age((s)) thirteen ((to)) through twenty with prior authorization.

(c) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns, for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, and prefabricated resin crowns, for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every three years, for clients age twenty ((years of age)) and younger, without prior authorization.

(e) Prefabricated stainless steel crowns for clients of the developmental disabilities administration of the department of social and health services (DSHS) without prior authorization according to WAC 182-535-1099.

(f) Core buildup, including pins, only on permanent teeth, only for clients age twenty ((years of age)) and younger, and only allowed in conjunction with crowns and when prior authorized. For indirect crowns, prior authorization must be obtained from the agency at the same time as the crown. Providers must submit pre- and post-endodontic treatment radiographs to the agency with the authorization request for endodontically treated teeth.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients age twenty ((years of age)) and younger, and only when in conjunction with a crown and when prior authorized.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1088 Dental-related services—Covered—Periodontic services. Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The medicaid agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) only on a case-by-case basis and when prior authorized and only for clients age twenty ((years of age)) and younger; and

(b) Gingivectomy/gingivoplasty (does not include distal wedge procedures on erupting molars) for clients of the developmental disabilities administration of the department of social and health services (DSHS) according to WAC 182-535-1099.

(2) **Nonsurgical periodontal services.** The agency:

(a) Covers periodontal scaling and root planing for clients ((from)) age thirteen ((to)) through eighteen ((years of age)), once per quadrant per client, in a two-year period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease and subgingival calculus;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least twelve calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant per client in a two-year period for clients age nineteen ((years of age)) and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitution for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(f) Covers periodontal scaling and root planing, one time per quadrant in a twelve-month period for clients residing in a nursing facility.

(3) **Other periodontal services.** The agency:

(a) Covers periodontal maintenance for clients ((from)) age thirteen through eighteen ((years of age)) once per client in a twelve-month period on a case-by-case basis, when prior authorized, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) The client has had periodontal scaling and root planing but not within twelve months of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients age nineteen ((years of age)) and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed at least twelve calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the developmental disabilities administration of DSHS according to WAC 182-535-1099.

(e) Covers periodontal maintenance for clients residing in a nursing facility:

(i) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing once every six months.

(ii) Periodontal maintenance allowed six months after scaling or root planing.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

WAC 182-535-1090 Dental-related services—Covered—Prosthodontics (removable). Clients described in WAC 182-535-1060 are eligible to receive the prosthodontics (removable) and related services, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Prosthodontics.** The medicaid agency requires prior authorization for all removable prosthodontic and prosthodontic-related procedures. Prior authorization requests must meet the criteria in WAC 182-535-1220. In addition, the agency requires the dental provider to submit:

(a) Appropriate and diagnostic radiographs of all remaining teeth.

(b) A dental record which identifies:

(i) All missing teeth for both arches;

(ii) Teeth that are to be extracted; and

(iii) Dental and periodontal services completed on all remaining teeth.

(2) **Complete dentures.** The agency covers complete dentures, including overdentures, when prior authorized.

The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the complete denture((~~, is considered~~)) as part of the complete denture procedure and ((~~is~~)) does not ((~~paid~~)) pay separately for this care.

(a) The agency covers complete dentures ((~~are limited to~~)) only as follows:

(i) One initial maxillary complete denture and one initial mandibular complete denture per client, per the client's lifetime.

(((~~A~~))) (ii) Replacement of a partial denture with a complete denture ((~~is covered:~~

~~(I) At least~~)) only when the replacement occurs three or more years after the seat date of the last resin partial denture((~~; or~~

~~(II) At least five years after the seat date of the last cast-metal partial denture~~)).

(((~~ii~~))) (iii) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per client's lifetime.

(b) The agency covers replacement of a complete denture or overdenture ((~~is covered~~)) only if prior authorized, and only when the replacement occurs at least five years after the seat date of the initial complete denture or overdenture.

(c) The provider must obtain a signed Denture Agreement of Acceptance (HCA 13-809) form from the client at the conclusion of the final denture try-in and at the time of delivery for an agency-authorized complete denture. If the client abandons the complete denture after signing the agreement of acceptance, the agency will deny subsequent requests for the same type of dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency.

(3) **Resin partial dentures.** The agency covers resin partial dentures((~~,~~)) only as follows:

(a) ((~~A resin partial denture is covered~~)) For anterior and posterior teeth only when the following criteria are met:

(i) The remaining teeth in the arch must be free of periodontal disease and have a reasonable prognosis.

(ii) The client has established caries control.

(iii) The client has one or more missing anterior teeth or four or more missing posterior teeth (excluding teeth one, two, fifteen, sixteen, seventeen, eighteen, thirty-one, and thirty-two). Pontics on an existing fixed bridge do not count as missing teeth. The agency does not consider closed spaces of missing teeth to qualify as a missing tooth.

(iv) There is a minimum of four stable teeth remaining per arch.

(v) There is a three-year prognosis for retention of the remaining teeth.

(b) Prior authorization is required ((~~for resin partial dentures~~)).

(c) The agency considers three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the delivery (placement) date of the resin partial denture((~~, is considered~~)) as part of the resin partial denture procedure and ((~~is~~)) does not ((~~paid~~)) pay separately for this care.

(d) Replacement of a resin-based partial denture with a new resin partial denture or a complete denture ((~~is covered~~)) if it occurs at least three years ((~~since~~)) after the seat date of the resin-based partial denture. The replacement denture must be prior authorized and meet agency coverage criteria in (a) of this subsection.

(e) The agency does not cover replacement of a cast-metal framework partial denture, with any type of denture, within five years of the seat date of the cast-metal partial denture.

(4) **Provider requirements.**

(a) The agency requires a provider to bill for a removable partial or complete denture only after the delivery of the prosthesis, not at the impression date. Refer to subsection (5)(e) of this section for what the agency may pay if the removable partial or complete denture is not delivered and inserted.

(b) The agency requires a provider to submit the following with a prior authorization request for a removable resin partial or complete denture for a client residing in an alternate living facility (ALF) as defined in WAC 182-513-1301 or in a nursing facility as defined in WAC 182-500-0075:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the Denture/Partial Appliance Request for Skilled Nursing Facility Client (HCA 13-788)

form available from the agency's published billing instructions which can be downloaded from the agency's web site.

(c) The agency limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (b) of this subsection.

(d) The agency requires a provider to deliver services and procedures that are of acceptable quality to the agency. The agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(5) **Other services for removable prosthodontics.** The agency covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs:

(i) To complete dentures, once in a twelve-month period. The cost of repairs cannot exceed the cost of the replacement denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(ii) To partial dentures, once in a twelve-month period. The cost of the repairs cannot exceed the cost of the replacement partial denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or partial denture, once in a three-year period when performed at least six months after the delivery (placement) date. An additional reline or rebase may be covered for complete or partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, only for clients age twenty ((~~years of age~~)) and younger, and only when performed within three months after the delivery (placement) date.

(e) Laboratory fees, subject to the following:

(i) The agency does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The agency may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the partial or complete denture;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the partial or complete denture; or

(E) Dies.

(iii) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1092 Dental-related services—Covered—Maxillofacial prosthetic services. Clients described in WAC 182-535-1060 are eligible to receive the maxillofacial prosthetic services listed in this section, subject to the following:

(1) Maxillofacial prosthetics are covered ((~~only for clients twenty years of age and younger~~)) on a case-by-case basis and when prior authorized; and

(2) The medicaid agency must preapprove a provider qualified to furnish maxillofacial prosthetics.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

WAC 182-535-1094 Dental-related services—Covered—Oral and maxillofacial surgery services. Clients described in WAC 182-535-1060 are eligible to receive the oral and maxillofacial surgery services listed in this section, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Oral and maxillofacial surgery services.** The medicaid agency:

(a) Requires enrolled providers who do not meet the conditions in WAC 182-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC 182-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the agency's current published ((~~*Dental-Related Services Provider Guide*~~)) billing guide as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

(i) Clients age eight ((~~years of age~~)) and younger;

(ii) Clients ((~~from~~)) age nine through twenty ((~~years of age~~)) only on a case-by-case basis and when the site-of-service is prior authorized by the agency; and

(iii) Clients any age of the developmental disabilities administration of the department of social and health services (DSHS).

(d) For site-of-service and oral surgery CPT codes that require prior authorization, the agency requires the dental provider to submit:

(i) Documentation used to determine medical appropriateness;

(ii) Cephalometric films;

(iii) Radiographs (X rays);

(iv) Photographs; and

(v) Written narrative/letter of medical necessity.

(e) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the agency. The documentation must include:

(i) Appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative and complete description of each service performed beyond surgical extraction or beyond code definition;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

(f) Covers routine and surgical extractions. Prior authorization is required when the:

(i) Extractions of four or more teeth per arch over a six-month period, resulting in the client becoming edentulous in the maxillary arch or mandibular arch; or

(ii) Tooth number is not able to be determined.

(g) Covers unusual, complicated surgical extractions with prior authorization.

(h) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth.

(i) Covers surgical extraction of unerupted teeth for clients age twenty ((~~years of age~~)) and younger.

(j) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The agency includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

(k) Covers the following without prior authorization:

(i) Biopsy of soft oral tissue;

(ii) Brush biopsy.

(l) Requires providers to keep all biopsy reports or findings in the client's dental record.

(m) Covers the following with prior authorization (photos or radiographs, as appropriate, must be submitted to the agency with the prior authorization request):

(i) Alveoloplasty on a case-by-case basis ((~~(only when not performed in conjunction with extractions)~~)).

(ii) Surgical excision of soft tissue lesions only on a case-by-case basis.

(iii) Only the following excisions of bone tissue in conjunction with placement of complete or partial dentures:

(A) Removal of lateral exostosis;

(B) Removal of torus palatinus or torus mandibularis; and

(C) Surgical reduction of osseous tuberosity.

(iv) Surgical access of unerupted teeth for clients age twenty ((~~years of age~~)) and younger.

(2) **Surgical incisions.** The agency covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The agency does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(c) Frenuloplasty/frenulectomy for clients age six ((~~years of age~~)) and younger without prior authorization.

(d) Frenuloplasty/frenulectomy for clients ((~~from~~)) age seven ((~~to~~)) through twelve ((~~years of age~~)) only on a case-by-case basis and when prior authorized. Photos must be submitted to the agency with the prior authorization request. Documentation supporting the medical necessity for the service must be in the client's record.

(3) **Occlusal orthotic devices.** (Refer to WAC 182-535-1098 (4)(c) for occlusal guard coverage and limitations on coverage.) The agency covers:

(a) Occlusal orthotic devices for clients ((~~from~~)) age twelve through twenty ((~~years of age~~)) only on a case-by-case basis and when prior authorized.

(b) An occlusal orthotic device only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

WAC 182-535-1098 Dental-related services—Covered—Adjunctive general services. Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based ((~~oral or parenteral conscious sedation, deep sedation, or general anesthesia, as follows~~)) deep sedation/general anesthesia services:

(i) ((~~The provider's current anesthesia permit must be on file with the agency.~~

~~(ii)~~)) For all eligible clients age eight ((~~years of age~~)) and younger((~~,~~)) and ((~~for~~)) clients any age of the developmental disabilities administration of the department of social and health services (DSHS)((~~,~~)). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(((~~(iii)~~))) (ii) For clients age nine ((~~years of age to~~)) through twenty ((~~years of age, deep sedation or general anesthesia services are covered~~)) on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(((~~(b)~~))) (f) through (m) and clients with cleft palate diagnoses, deep sedation ((~~or~~))/general anesthesia services do not require prior authorization.

(((~~(iv) Prior authorization is not required for oral or parenteral conscious sedation~~)) (iii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose files contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age twenty ((~~years of age~~)) and younger, and for clients any age of the develop-

mental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(((~~(v) For clients from nine to twenty years of age who have a diagnosis of oral facial cleft, the agency does not require prior authorization for deep sedation or general anesthesia services when the dental procedure is directly related to the oral facial cleft treatment.~~

~~(vi) A~~)) (ii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B)) Whose files contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.

(e) Covers office-based nonintravenous conscious sedation:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older, only when prior authorized.

(f) Requires providers ((~~must~~)) to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.

(((~~(vii) For clients twenty-one years of age and older, prior authorization is required for general anesthesia and will be considered only for those clients with medical conditions such as tremors, seizures, behavioral health conditions, breathing difficulties, and other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.~~

~~(d)~~)) (g) Requires providers to have a current anesthesia permit on file with the agency.

(h) Covers administration of nitrous oxide, once per day.

(((~~(e)~~))) (i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(((~~(f)~~))) (j) Pays for dental anesthesia services according to WAC 182-535-1350.

(((~~(g)~~))) (k) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the agency for the services to be covered.

(2) **Professional visits.** The agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.

(b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.

(3) **Drugs and medicaments (pharmaceuticals).** ((~~The agency covers drugs and medicaments, such as antibiotics, steroids, anti-inflammatories, or other therapeutic medications for clients twenty years of age and younger. The agency's dental program does not pay for oral sedation medications.~~))

(a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.

(b) The agency covers therapeutic parenteral drugs as follows:

(i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age twenty and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management ((~~when~~)) provided in dental offices or dental clinics. Documentation supporting the need for behavior management ((~~is~~)) must be in the client's record. Behavior management is for the following clients whose documented behavior requires the assistance of one additional professional ((~~dental~~)) staff employed by the billing provider to protect the client and the professional staff from injury while treatment is rendered((~~.~~)):

(i) Clients age eight ((~~years of age~~)) and younger;

(ii) Clients ((~~from~~)) age nine through twenty ((~~years of age~~)), only on a case-by-case basis and when prior authorized;

(iii) Clients any age of the developmental disabilities administration of DSHS;

(iv) Clients diagnosed with autism; and

(v) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients ((~~from~~)) age twelve through twenty ((~~years of age~~)) when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 15-10-043, filed 4/29/15, effective 5/30/15)

WAC 182-535-1099 Dental-related services for clients of the developmental disabilities administration of the department of social and health services. Subject to coverage limitations((,)) and restrictions((, and client age requirements)) identified for a specific service, the medicaid agency pays for the additional dental-related services listed ((under the categories of services)) in this section that are provided to clients of the developmental disabilities administration of the department of social and health services (DSHS)((. This chapter also applies to clients any age of the developmental disabilities administration of DSHS, unless otherwise stated in this section)), regardless of age.

(1) **Preventive services.** The agency covers:

(a) Periodic oral evaluations((. The agency covers periodic oral evaluations up to three times in a twelve-month period)) once every four months per client, per provider.

(b) Dental prophylaxis((. The agency covers dental prophylaxis or)) once every four months.

(c) Periodontal maintenance ((up to three times in a twelve-month period)) once every six months (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(((c))) (d) Topical ((fluoride treatment. The agency covers topical)) fluoride varnish, rinse, foam or gel, ((up to three times within a twelve-month period)) once every four months, per client, per provider or clinic.

(((d))) (e) Sealants((. The agency covers sealants)):

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Other restorative services.** The agency covers ((the following restorative services)):

(a) All recementations of permanent indirect crowns.

(b) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary anterior teeth once every two years only for clients age twenty ((years of age)) and younger without prior authorization.

(c) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, resin-based composite crowns (direct), prefabricated esthetic coated stainless steel crowns, and prefabricated resin crowns for primary posterior teeth once every two years for clients age twenty ((years of age)) and younger without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns, including stainless steel crowns with resin window, and prefabricated resin crowns for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every two years without prior authorization for any age.

(3) **Periodontic services.**

(a) **Surgical periodontal services.** The agency covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

(b) **Nonsurgical periodontal services.** The agency covers:

(i) Periodontal scaling and root planing, one time per quadrant in a twelve-month period.

(ii) Periodontal maintenance (four quadrants) substitutes for an eligible periodontal scaling or root planing, twice in a twelve-month period.

(iii) Periodontal maintenance allowed six months after scaling or root planing.

(iv) Full-mouth or quadrant debridement allowed once in a twelve-month period.

(4) **Adjunctive general services.** The agency covers:

(a) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

(b) Sedation services according to WAC 182-535-1098 (1)(c) and (e).

(5) **Nonemergency dental services.** The agency covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, and 182-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

(6) **Miscellaneous services - Behavior management.** The agency covers behavior management provided in dental offices or dental clinics. Documentation supporting the medical necessity of the service must be included in the client's record.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1220 Obtaining prior authorization for dental-related services. (1) The medicaid agency uses the determination process for payment described in WAC 182-501-0165 for covered dental-related services that require prior authorization.

(2) The agency requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on the General Information for Authorization (HCA 13-835) form, available on the agency's web site.

(3) The agency may request additional information as follows:

(a) Additional radiographs (X rays) (refer to WAC 182-535-1080(2));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the agency.

(4) The agency may require second opinions and/or consultations by a licensed independent doctor of dental surgery (DDS)/doctor of dental medicine (DMD) before authorizing any procedure.

(5) When the agency authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six to twelve months as indicated in the agency's authorization letter and only if the client is eligible for covered services on the date of service.

(6) The agency denies a request for a dental-related service when the requested service:

(a) Is covered by another agency program;

(b) Is covered by an agency or other entity outside the agency; or

(c) Fails to meet the program criteria, limitations, or restrictions in this chapter.