WSR 19-21-110
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 17, 2019, 2:28 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

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

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

SWCAA 400-050 - Emission Standards for Combustion and Incineration Units, existing rule section containing general air emission standards for 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, existing rule section containing particulate matter emission standards applicable to all general processes.

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

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

SWCAA 400-075 - Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, existing rule 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 400-105 - Records, Monitoring and Reporting, existing rule section identifying requirements for emission monitoring, emission sampling and reporting, and submission of emission inventories.

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

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

SWCAA 400-111 - Requirements for New Sources in a Maintenance Plan Area, existing rule section identifying requirements specific to new sources located in a Maintenance Plan Area.

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

SWCAA 400-171 - Public Involvement, 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 400-850 - Actual Emissions - Plantwide Applicability Limitation (PAL), existing rule 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, Appendix A - SWCAA Method 9 - Visual Opacity Determination Method, existing rule section establishing the agency's required method for determining visual opacity.

Hearing Location(s): On January 22, 2020, at 6:00 p.m., at the Southwest Clean Air Agency (SWCAA) Business Office.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email wess@swcleanair.org, fax 360-576-0925, by January 24, 2020.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 x110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by January 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 400-025 - Adoption of Federal Rules, the proposed rule changes establish a new section identifying a generally applicable adoption by reference date for federal regulations cited in other sections of SWCA [SWCAA] 400.

SWCAA 400-046 - Application Review Process for Nonroad Engines, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-050 - Emission Standards for Combustion and Incineration Units, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025 and add a new federal regulation citation for Hospital/Medical/Infectious Waste Incinerators.

SWCAA 400-060 - Emission Standards for General Process Units, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-070 - General Requirements for Certain Source Categories, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-072 - Emission Standards for Selected Small Source Categories, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-075 - Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-105 - Records, Monitoring and Reporting, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-106 - Emission Testing and Monitoring at Air Contaminant Sources, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-110 - Application Review Process for Stationary Sources (New Source Review), the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-111 - Requirements for New Sources in a Maintenance Plan Area, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-115 - Standards of Performance for New Sources, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-171 - Public Involvement, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400-850 - Actual Emissions - Plantwide Applicability Limitation (PAL), the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

SWCAA 400, Appendix A - SWCAA Method 9 - Visual Opacity Determination Method, the proposed rule changes revise adoption by reference citations to cite the date in SWCAA 400-025.

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

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 x126; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x130; and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x122.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 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.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141 (1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 17, 2019
Uri Papish
Executive Director

NEW SECTION

SWCAA 400-025 Adoption of Federal Rules

Federal rules cited in this rule are adopted by reference as in effect on July 1, 2019.

AMENDATORY SECTION (Amending WSR 17-11-078 filed 5/18/17, effective 6/18/17)

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. Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A (as in effect on the date cited in SWCAA 400-025). If the ambient impact of a proposed project could potentially exceed an applicable ambient air 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, 2015~~)) the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(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 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. The Agency may specify an earlier date for 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 current Consolidated Fee Schedule established in accordance with SWCAA 400-098 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 a second registration fee, as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, must be paid.

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

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 (as in effect on the date cited in SWCAA 400-025) 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 Ecology Test Method 14. Total carbonyls means the concentration of organic compounds containing the =C=O radical. An applicable EPA reference method or other procedures approved in advance by the Agency 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.

(4) **Measurement correction.** Measured concentrations for combustion and incineration units shall be 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.

(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 (as in effect on ((~~January 30, 2015~~)) the date cited in SWCAA 400-025) 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 (as in effect on ((~~January 30, 2015~~)) the date cited in SWCAA 400-025) 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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025); 40 CFR Part 60, Subpart AAAA (as in effect on ((~~June 1, 2015~~)) the date cited in SWCAA 400-025); 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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025), Eb (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025), and AAAA (as in effect on ((~~June 1, 2015~~)) the date cited in SWCAA 400-025), and SWCAA 400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if the two requirements in (c)(iii)(B)(I) and (II) of this subsection are met.

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

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

(iv) Medical waste incineration units. Incineration units regulated under 40 CFR Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025);

(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) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(xi) Rack, part, and drum reclamation units. See 40 CFR 60.2265 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(xiii) Sewage sludge incinerators. Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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((,)) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) 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((,)) (as in effect on ((~~July 1, 2015, which is adopted by reference~~)) the date cited in SWCAA 400-025).

(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 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.)

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025), mean the unit is considered a new unit and subject to SWCAA 400-115(1), which adopts 40 CFR Part 60, Subpart AAAA (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) 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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) 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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) 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) (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025) 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 (as in effect on ((~~July 1, 2015), which is adopted by reference~~)) the date cited in SWCAA 400-025).

(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.

(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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(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 (as in effect on ((~~February 5, 2001~~)) the date cited in SWCAA 400-025) 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.

(7) **Hospital/Medical/Infectious Waste Incinerators.** Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 CFR 62, Subpart HHH (as in effect on the date cited in SWCAA 400-025).

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 16-19-009 filed 9/8/16, effective 10/9/16)

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, 2015~~)) on the date cited in SWCAA 400-025) 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 16-19-009 filed 9/8/16, effective 10/9/16)

SWCAA 400-070 General Requirements for Certain Source Categories

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

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall 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 pro-

vided 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. Outdoor blasting of structures or items too large to be reasonably handled indoors 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 of materials that contain, or have a coating that may contain, a substance that is identified as a toxic air pollutant in Chapter 173-460 WAC or a hazardous substance shall 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, 2015,~~)) are adopted by reference (as in effect on the date cited in SWCAA 400-025).

(10) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be either publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on ((~~July 1, 2000~~)) the date cited in SWCAA 400-025.

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

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

(c) Standards for MSW landfill emissions:

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

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

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

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

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

(e) Test methods and procedures:

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

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

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

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

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

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

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

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

(iv) Chromium - 10 ppm maximum;

(v) Lead - 100 ppm maximum;

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

(vii) Sulfur - 1.0 percent maximum;

(viii) Flash point - 100ºF minimum; and

(ix) Total halogens - 1,000 ppm maximum.

(12) **Coffee roasters.**

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

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

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

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

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

(b) Requirements. Batch coffee roasters with a capacity of 10 pounds or greater of green coffee beans per batch shall 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).

(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 (0.024 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 17-11-078 filed 5/18/17, effective 6/18/17)

SWCAA 400-072 Small Unit Notification for Selected Source Categories

Purpose. The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to 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 as described in SWCAA 400-109 is not required for an affected emission unit if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. 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 subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

(1) **Exceptions.**

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

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

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

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

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

(a) Location of installation and/or operation;

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

(c) Applicable processing fee;

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

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

(f) Control equipment specifications;

(g) Vendor performance guarantees; and

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

(3) **Processing fee.** Each notification shall be accompanied by the payment of a processing fee as provided in the

current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

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

(5) **Source categories.**

(a) **Coffee roasters.**

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

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

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

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

(iii) **General requirements.**

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

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

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

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

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

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

(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)) the date cited in SWCAA 400-025)((,)) shall be used to determine compliance.

(iii) **General requirements.**

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

(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 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. 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 or 50 ppmvd NO_x 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.

(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.

(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. 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;

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

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

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

(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 use DF-2000 cleaning fluid or an equivalent solvent.

(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 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.

(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 proposed for installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

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

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

(A) Visible emissions from rock crushing operations shall 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) 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 (as in effect on the date cited in SWCAA 400-025).

(F) For portable rock crushing operations, the owner or operator shall notify the Agency in advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a 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 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 requirements of that regulation (as in effect on the date cited in SWCAA 400-025).

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall 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.

(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.

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 16-19-009 filed 9/8/16, effective 10/9/16)

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 July 1, 2015, as~~)) contained in 40 CFR Part 61((~~,~~)) are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). 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 ((~~July 1, 2015~~)) the date cited in SWCAA 400-025).

(4) This section shall not apply to any "stationary source" operating pursuant to a waiver granted by EPA or an exemption granted by the President of the United States during the effective life of such waiver or exemption.

(5) Specific standards of performance referred to as Maximum Achievable Control Technology (MACT) have been promulgated by EPA.

(a) ((~~As of July 1, 2015,~~)) 40 CFR Part 63 and appendices are hereby adopted by reference (as in effect on the date cited in SWCAA 400-025). 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-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

(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 July 1, 2015,~~)) is hereby adopted by reference (as in effect on the date cited in SWCAA 400-025).

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

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 SWCAA 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 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. 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 ((~~July 1, 2015~~)) the date cited in SWCAA 400-025), and 40 CFR Part 60, Appendices B through F, as appropriate, as adopted by reference in SWCAA 400-115.

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

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

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

(ii) Not subject to an applicable emission standard.

(5) **Misrepresentation.** No person shall make any false material statement, representation or certification in any form, notice, or report required under Chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

(6) **Tampering.** No person shall render inaccurate any monitoring device or method required under Chapter 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 (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025), and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

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

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

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

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

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

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

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

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

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

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

(iv) The results of all cylinder gas audits 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 16-19-009 filed 9/8/16, effective 10/9/16)

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, 2015~~)) the date cited in SWCAA 400-025), approved test methods from Ecology's Test Manual Procedures for Compliance Testing, Opacity Determination Method (SWCAA Method 9 - Appendix A to 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 3 business days prior to testing so that they have an opportunity to be present during testing.

(e) **Test duration.** A minimum of 3 test runs, at least 1 hour in length, shall 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. 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 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 concentra-

tion 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 16-19-009 filed 9/8/16, effective 10/9/16)

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 173-400-700 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) All review requirements shall be met, and an air discharge permit shall be issued by the Agency, prior to construction of any modification to a "stationary source" that requires an increase in an existing plantwide emissions cap or unit specific emission limit.

(c) Air discharge permit applications must demonstrate that all applicable emission standards have been or will be met by the proposed modification or "new source." Examples of applicable emissions standards include, but are not limited to: RACT, BACT, LAER, BART, MACT, NSPS, NESHAPS and applicable ambient air quality standards. Additional requirements for new and modified "stationary sources" and replacement or alteration of control equipment are addressed in SWCAA 400-111, 400-112, 400-113, 400-114, and 400-151. If the ambient impact of a proposed project could potentially exceed an applicable ambient air increment, the Agency may require that the applicant demonstrate compliance with available ambient air increments and Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(d) PSD applicability. Air discharge permit applications for "major stationary sources" or "major modifications" that meet the applicability criteria of WAC 173-400-720 shall demonstrate that all applicable requirements of WAC 173-400-700 through 750 have been met.

(e) Air discharge permit applications for "major stationary sources" or "major modifications" that are located within a designated nonattainment area and meet the applicability criteria of SWCAA 400-820 shall demonstrate that all applicable requirements of SWCAA 400-800 through -860 have been met.

(f) An applicant filing an air discharge application for a project described in WAC 173-400-117(2), Special Protection Requirements for Federal Class I Areas, must send a copy of the application to the responsible federal land manager and EPA.

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete application, the Agency shall either issue a final decision approving or denying the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. The Agency will promptly 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 subject to WAC 173-400-700 through -750 shall comply with the public process requirements of those sections.

(b) An owner or operator who submits applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(c) Permits issued pursuant to this section become effective on the date of issuance unless otherwise specified.

(d) Every final determination on an air discharge permit application that results in the issuance of an air discharge permit by the Agency shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(e) 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.

(6) **Portable sources.** The owner(s) or operator(s) of 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 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.

A portable source that does not operate within the jurisdiction of the Agency for a period of more than 5 years shall be removed from active registration unless the owner or operator demonstrates a need to maintain the registration. Any portable source removed from active registration shall 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. 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 standard set by regulation or rule to be exceeded;

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

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

(iv) The revised approval conditions will continue to require BACT, as defined at the time of the original approval, for each approved "stationary source" except where the Federal Clean Air Act requires LAER (e.g., any change that meets the definition of a "new source" must complete a new BACT determination); and

(v) The revised approval conditions meet the requirements of SWCAA 400-110, 400-111, 400-112, 400-113, and 400-830(3) as applicable.

(b) Requests for a change in PSD permit conditions must be made directly to Ecology. The Agency does not have authority to issue or modify PSD permits.

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

(d) The criteria in 40 CFR 52.21 (r)(4), as adopted by reference in WAC 173-400-720 or SWCAA 400-830(3) as applicable, shall 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(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 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 16-19-009 filed 9/8/16, effective 10/9/16)

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 WAC 173-400-710.

"New sources" 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~~)) as in effect on the date cited in SWCAA 400-025).

(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.

(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.

(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.

(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.

(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 16-19-009 filed 9/8/16, effective 10/9/16)

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 July 1, 2015~~)) are hereby adopted by reference (as in effect on ((~~July 1, 2015~~)) the date cited in SWCAA 400-025). 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.)

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

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) **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, 2015~~)) the date cited in SWCAA 400-025) as part of review under SWCAA 400-046, 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 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 must comply with the public notice requirements of WAC 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 given by prominent advertisement in the area of the proposed project. 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;

(v) The location of the documents made available for public inspection;

(vi) Identification of a 30 calendar day period for submitting written comment to the Agency;

(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;

(viii) The length of the public comment period in the event of a public hearing; and

(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 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 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 16-19-009 filed 9/8/16, effective 10/9/16)

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 (as in effect on the date cited in SWCAA 400-025) 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.

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

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, 2015~~)) the date cited in SWCAA 400-025).

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 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.

WSR 19-22-040
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed October 31, 2019, 4:01 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SWCAA 476-010 Purpose, this is an existing rule section identifying the purpose of the asbestos regulation.

SWCAA 476-030 Definitions, this is an existing section containing definitions for terms and words directly relevant to the regulation.

SWCAA 476-040 Asbestos Project Requirements, this is an existing section describing the requirements for asbestos projects.

SWCAA 476-050 Notification Requirements and Fees, this is an existing section containing notification requirements for asbestos projects and applicable fees.

SWCAA 476-060 Procedures for Asbestos Projects, this is an existing section describing required measures to control emissions from asbestos projects.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material, this is an existing section containing requirements for disposal and storage of asbestos-containing waste material.

Hearing Location(s): On January 14, 2020, at 6:00 p.m., at the Southwest Clean Air Agency (SWCAA) business office.

Date of Intended Adoption: February 6, 2020.

Submit Written Comments to: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, email jerry@swcleanair.org, fax 360-576-0925, by January 17, 2020.

Assistance for Persons with Disabilities: Contact Tina Hallock, phone 360-574-3058 x110, fax 360-576-0925, TTY 360-574-3058, email tina@swcleanair.org, by January 15, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SWCAA 476-010, the proposed rule change removes encapsulation from the list of regulated activities.

SWCAA 476-030, the proposed rule change reorders two definitions and makes formatting changes to existing definitions.

SWCAA 476-040, the proposed rule change corrects sectional references, replaces the term Agency with the term SWCAA, removes the Exceptions paragraph, revises bulk sampling requirements and makes minor text edits.

SWCAA 476-050, the proposed rule change clarifies the need for SWCAA approval for project notices, replaces the term Agency with the term SWCAA and makes minor text edits.

SWCAA 476-060, the proposed rule change adds a requirement for worker certification and identification cards and replaces the term Agency with the term SWCAA.

SWCAA 476-070, the proposed rule change replaces the term Agency with the term SWCAA.

Reasons Supporting Proposal: The proposed changes are necessary to support SWCAA's implementation of its local asbestos program.

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 and Enforcement: Jerry Ebersole, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x122; and Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, 360-574-3058 x130.

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

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 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.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: Pursuant to RCW 70.94.141(1), air pollution control authorities are authorized to adopt and amend rules and regulations in accordance with chapter 42.30 RCW and selected portions of chapter 34.05 RCW. SWCAA is not deemed a state agency and is not required to comply with the provisions of chapter 19.85 RCW.

October 31, 2019
Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-010 Purpose

The purpose of this regulation is to control asbestos emissions from the removal, ((~~encapsulation,~~)) salvage, disposal, or disturbance of asbestos-containing materials in order to protect public health.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-030 Definitions

(1) **"Adequately wet"** means sufficiently mixed, saturated, penetrated, or coated with a fine mist of water or aqueous solution to prevent emissions.

(2) **"AHERA accredited building inspector"**((")) means a person who has successfully completed the training requirements for a building inspector established by the Environmental Protection Agency (EPA) Asbestos Model Accr((-))editation Plan; Interim Final Rule (40 CFR 763, Appendix C to Subpart E, I.B.3) and whose certification is current. (Asbestos Hazard Emergency Response Act-AHERA)

(((~~(3) "Asbestos project designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763 Subpart E, Appendix C) and whose certification is current.~~)))

(((~~(4)~~))) (3) **"Asbestos"** means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

(((~~(5)~~))) (4) **"Asbestos-containing material"**((")) means any material containing greater than one percent (1%) asbestos as determined by polarized light microscopy using the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1. This term does not include nonfriable asbestos-containing roofing materials, regardless of asbestos content, when the following conditions are met:

(a) The asbestos-containing roofing material is in good condition and is not peeling, cracking, or crumbling; and

(b) The binder is petroleum based, the asbestos fibers are suspended in that base, and individual fibers are still encapsulated; and

(c) The binder still exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing it; and

(d) The building, vessel, or structure containing the asbestos-containing roofing material, will not be demolished by burning or mechanical renovation/demolition methods that may release asbestos fibers.

(((~~(6)~~))) (5) **"Asbestos-containing waste material"**((")) means any waste that contains, or is contaminated with, asbestos-containing material. This term includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material(s) collected for disposal, or asbestos-containing waste, debris, containers, bags, protective clothing, or HEPA filters. This term does not include samples of asbestos containing material taken for testing or enforcement actions.

(((~~(7) "Asbestos project" means the construction, demolition, maintenance, repair, remodeling, or renovation of any public or private building(s), vessel, structure(s), or component(s) involving the demolition, removal, salvage, disposal, or disturbance of any asbestos-containing material or presumed asbestos containing material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released. Nor does this include routine maintenance and other non-abatement projects that may minimally disturb asbestos-containing materials.~~)))

(((~~(8)~~))) (6) **"Asbestos inspection"** means an inspection performed by an AHERA accredited building inspector using the procedures contained in 40 CFR 763. 85 and 86, or an alternate method that has received prior approval from ((~~the Agency~~)) SWCAA, to determine whether materials or structures to be worked on, removed, remodeled, renovated or demolished, (including material on the outside of structures) contain asbestos.

(7) **"Asbestos project"** means the construction, demolition, maintenance, repair, remodeling, or renovation of any public or private building(s), vessel, structure(s), or component(s) involving the demolition, removal, salvage, disposal, or disturbance of any asbestos-containing material or presumed asbestos containing material. It does not include the application of duct tape, re-wettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released. Nor does this include routine maintenance and other non-abatement projects that may minimally disturb asbestos-containing materials.

(8) **"Asbestos project designer"** means a person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763 Subpart E, Appendix C) and whose certification is current.

(~~9) **"Agency"** means the Southwest Clean Air Agency (SWCAA).~~

(((~~(10)~~))) (9) ((")**"Certified asbestos contractor"**(")) means any partnership, firm, association, corporation or sole proprietorship, registered under chapter 18.27 RCW, that submits a bid, or contracts to remove asbestos for another and is certified by the Washington Department of Labor & Industries to remove asbestos.

(((~~(11)~~))) (10) **"Certified asbestos worker/supervisor"**(") means a person who is certified by the Washington State Department of Labor and Industries under WAC 296-65-010 and 012, and 030 to undertake an asbestos project or, for federal employees working in a federal facility, trained in an equally effective program approved by the United States Environmental Protection Agency.

(((~~(12)~~))) (11) **"Collected for disposal"**(") means sealed in a leak-tight container while adequately wet.

(((~~(13)~~))) (12) **"Component"** means any equipment, pipe, structural member, or other item covered with, coated with, or containing asbestos-containing material.

(((~~(14)~~))) (13) **"Controlled area"** means an area with access restricted to allow only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA). For owner-occupied, single-family residence dwellings, the controlled area is the area where the asbestos-containing material is being removed.

(((~~(15)~~))) (14) **"Demolition"** means the wrecking, dismantling, removal of any load-supporting structural member on, or the intentional burning of((~~,~~)) any building, vessel, structure, or portion thereof((~~.~~)), rendering the structure uninhabitable. Demolition includes the removal of a facility from its foundation followed by relocation of the facility onto a new foundation at a different location.

(((~~(16)~~))) (15) ((")**"Emergency asbestos project"**(")) means an unplanned asbestos project necessitated by a sudden and unexpected event. Such events may include earthquakes, water damage, fire damage, non-routine failure or malfunction of equipment, or identification of additional asbestos-containing material discovered during an asbestos project.

(((~~(17)~~))) (16) ((")**"Facility"**(")) means all or part of any institutional, commercial, public, industrial, agricultural or residential structure, and marine vessels. This term does not include recreational vehicles such as campers, trailers, motorhomes or personal watercraft.

(((~~(18)~~))) (17) **"Friable asbestos-containing material"** means asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal.

(((~~(19)~~))) (18) **"HEPA filter"** means a high efficiency particulate air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.7% efficiency or greater.

(((~~(20)~~))) (19) **"Leak tight container"** means a dust and liquid tight container that encloses the asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and polyethylene plastic used to wrap asbestos covered components.

(((~~(21)~~))) (20) ((")**"Negative pressure enclosure"**(")) means any enclosure of an asbestos abatement project where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.

(((~~(22)~~))) (21) **"Nonfriable asbestos-containing material"** means asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

(((~~(23)~~))) (22) ((")**"Notification period"**(")) means the 10-day period from the date that all required submittals and fees are received ((~~at~~)) by SWCAA.

(((~~(24)~~))) (23) **"Owner" or "Operator"** means any person who owns, leases, operates, controls, or is responsible for activities at a project site, or a project operation, or both.

(((~~(25)~~))) (24) ((")**"Owner occupied residential dwelling"**(")) means any single-family housing unit which is permanently or seasonally occupied by the owner of the unit both prior to and after renovation ((~~or demolition~~)). This term includes houses, mobile homes, houseboats, houses with a 'mother-in-law apartment' or 'guest rooms', and associated structures located on the property.((')) This term does not include structures that are to be demolished or renovated as part of a commercial or public project; nor does this term include any mixed-use building, structure or installation that contains a residential unit, or any building that is leased, used as a rental, or for commercial purposes.

(((~~(26)~~))) (25) **"Person"** means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(((~~(27)~~))) (26) **"Presumed asbestos-containing material"** means any suspect asbestos containing material not evaluated or sampled by an AHERA accredited building inspector and is therefore presumed to be greater than 1% asbestos and shall be treated as such.

(((~~(28)~~))) (27) **"Renovation"** means the modification of any existing building, vessel, structure, component, or portion thereof, not including demolition.

(((~~(29)~~))) (28) ((")**"Structure"**(")) means something built or constructed, in part or whole. Examples include, but are not limited to, the following in part or whole: houses, garages, commercial/industrial/municipal buildings, storage tanks and vessels, mobile homes, bridges, pole buildings, canopies and lean-tos. The term does not include normally mobile equipment (including but not limited to automobiles, recreational vehicles and boats), wood decks and fences.

(((~~(30)~~))) (29) **"Suspect asbestos-containing material"** means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, mastics and cement siding regardless of year installed.

(((~~(31)~~))) (30) ((")**"Temporary asbestos storage facility"**(")) means a controlled facility for the storage of asbestos-containing waste materials longer than 10 days after collection and prior to transfer to a permanent disposal site.

(((~~(32)~~))) (31) **"Visible emissions"** means emissions to the atmosphere that are visually detectable without the aid of instruments((~~.~~)), including deposition and track out of asbestos containing material outside of the controlled area. This term does not include condensed uncombined water vapor.

(((~~(33)~~))) (32) **"Waste generator"** means any owner or operator of a source whose act or process produces asbestos-containing waste material.

(((~~(34)~~))) (33) **"Waste shipment record"** means the shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos-containing waste material.

(((~~(35)~~))) (34) **"Working Day"** means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

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 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-040 Asbestos Project Requirements

(1) **Renovation**

(a) Prior to performing any renovation activity, the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. If suspect asbestos containing material is present and may be disturbed during the project, the property owner or owner's agent must:

(i) Treat the suspect asbestos-containing material as presumed asbestos-containing material and handle it as asbestos containing material; or

(ii) Have an asbestos inspection conducted by an AHERA accredited building inspector to determine if asbestos is present. Suspect material shall be analyzed for asbestos content using the procedures in Title 40 Part 763 Subpart E, Appendix E, Section 1.

(iii) For renovations performed by the owner-occupant of a ((~~single~~)) single-family residence all suspect materials shall be handled as presumed asbestos-containing materials unless determined otherwise by analyzing for asbestos content using the procedures in 40 CFR Part 763 Subpart E, Appendix E, Section 1. An asbestos inspection is not required to be performed by an AHERA certified building inspector at a ((~~single~~)) single-family residence when the renovation project is performed by the owner-((~~/~~))occupant.

(b) The results of any asbestos inspection required under this rule shall be documented and be posted by the property owner or owner's agent.

(2) **Demolition**

(a) Prior to performing any demolition project, the property owner or the owner's agent shall obtain an asbestos inspection of the structure or part of the structure where the demolition will occur for the presence of asbestos. The asbestos inspection shall be performed by an AHERA accredited building inspector.

(b) Samples of suspect asbestos-containing materials shall be collected by an AHERA accredited building inspector for analysis to determine the amount and type of asbestos present in the material.

(c) Any material presumed to be asbestos-containing material is not required to be sampled by an AHERA accredited building inspector. Any material presumed to be asbestos-containing material shall be handled as though it was an asbestos-containing material.

(d) Only an AHERA accredited building inspector may determine, by performing an asbestos inspection, that a material is not a suspect asbestos-containing material.

(e) Suspect materials collected shall be analyzed for asbestos content using the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(f) A summary of the results of the asbestos inspection shall be documented and shall either be posted by the property owner or owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(g) Prior to demolition all identified or presumed asbestos-containing material must be removed as an asbestos project in accordance with SWCAA 476-060((~~080~~)).

(h) Regardless of the amount of asbestos-containing material present (including none), a Notification of Demolition must be submitted to ((~~the Agency~~)) SWCAA on SWCAA ((~~Agency~~)) approved forms and include a copy of the asbestos inspection report prior to commencing a demolition project in accordance with SWCAA 476-050(2). In no event shall a project or activity proceed on a date other than the date indicated on the notification.

(i) If the facility is to be demolished by intentional burning, all asbestos-containing material shall be removed as an asbestos project in accordance with SWCAA 476-080.

(j) ((~~Underground Storage Tanks~~)) An asbestos survey is not required prior to demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the demolition of an underground storage tank, work shall cease until it is determined whether or not the suspect asbestos-containing material is asbestos-containing material by the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(3) **Asbestos Inspection Procedures**

(a) The required number of bulk asbestos samples must be collected per the sampling procedures detailed in EPA regulation 40 CFR Part 763.86

(b) An AHERA accredited building inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing material that is not presumed to be asbestos-containing material, and shall collect the samples as follows:

(i) At least three (3) bulk samples shall be collected from each homogeneous area that is 1,000 square feet or less.

(ii) At least five (5) bulk samples shall be collected from each homogeneous area that is greater than 1,000 square feet but less than or equal to 5,000 square feet.

(iii) At least seven (7) bulk samples shall be collected from each homogeneous area that is greater than 5,000 square feet.

(c) Except as provided for in 40 CFR 763.86 (b)(2)-(4), an AHERA accredited building inspector shall collect, in a statistically random manner, at least three (3) bulk samples from each homogeneous area of thermal system insulation that is not presumed to be asbestos-containing material.

(d) An AHERA accredited building inspector shall collect~~,~~ at least one (1) bulk sample from each homogenous area of any miscellaneous material that is less than 100 square feet and at least three (3) bulk samples from each homogeneous area of any miscellaneous material that is greater than or equal to 100 square feet not presumed to be asbestos-containing material.

(e) Except for wallboard, bulk samples shall not be composited for analysis.

(f) Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, or a more effective method as approved or required by EPA.

(4) **Asbestos Inspection Report Requirements.** Asbestos inspection reports shall contain, at a minimum, all of the following information:

(a) General Information.

(i) Date the inspection was performed;

(ii) AHERA accredited building inspector name and signature, certification number, date certification expires, and name and address of entity providing AHERA accredited building inspector certification;

(iii) Site address/location where the inspection was performed;

(iv) Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

(v) The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage), if known;

(vi) Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area);

(vii) Identify and describe all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

(viii) Identify materials presumed to be asbestos-containing material;

(ix) Exact location where each bulk asbestos sample was taken (e.g., schematic or other detailed description sufficient for any person to match the material(s) sampled and tested to the material(s) on site);

(x) Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

(A) Laboratory name, and address

(B) Bulk sample numbers;

(C) Bulk sample descriptions;

(D) Bulk sample results showing asbestos content; and

(E) Name of the person at the laboratory that performed the analysis.

(b) Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

(i) Describe the color of each asbestos-containing material;

(ii) Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g. using schematics, detailed description, or both);

(iii) Provide the approximate quantity of each asbestos-containing material in square feet or linear feet and;

(iv) Describe the condition of each asbestos-containing material (good or damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, or fire damage).

(5) **Asbestos Inspection Posting.** Except as provided for in SWCAA 476-040((-))(7), a complete copy of an asbestos inspection report must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by SWCAA and all persons at the work site. This applies even when the asbestos inspection performed by an AHERA accredited building inspector states there are no asbestos-containing materials in the work area. During demolition, if it is not practical to post the asbestos inspection report, it must be readily accessible and made readily available for inspection by SWCAA and all persons at the demolition site.

(6) **Asbestos Survey Retention.** The property owner or owner's agent, and the AHERA accredited building inspector that performed the asbestos inspection (when the asbestos inspection has been performed by an AHERA accredited building inspector), shall retain a complete copy of the asbestos inspection for at least 24 months from the date the inspection was performed and provide a copy to ((~~the Agency~~)) SWCAA upon request.

(((~~(7) Exceptions. An asbestos inspection is not required for renovation of an owner-occupied, single-family residence performed by the owner-occupant. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.~~))

(((~~(8)~~))) (7) **Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.** It is not required that an AHERA accredited building inspector sample any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy to ((~~the Agency~~)) SWCAA upon request.

(((~~(9)~~))) (8) **Alternate Asbestos Inspection.** A written alternate asbestos inspection method shall be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 CFR 763.86 cannot be exclusively performed. All other asbestos inspection requirements of this regulation apply. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g. when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by ((~~the Agency~~)) SWCAA. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos inspection methodology must be used alone or, when possible, in combination with conventional inspection methodology. An alternate asbestos inspection methodology typically includes random sampling according to a grid pattern (e.g. random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, *Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies*, EPA/600/R-92/128, July 1992.

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 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-050 Notification Requirements and Fees

(1) **Applicability.** No person shall cause or allow work on an asbestos project or demolition activity unless the owner or owner's agent has submitted a complete notification to ((~~the Agency~~)) SWCAA on ((~~Agency~~)) SWCAA approved forms, in accordance with the advance notification period requirements and fees as provided in the current SWCAA Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(a) A SWCAA approved Notice of Intent to Remove Asbestos is required for all asbestos projects. A Notice of Intent to Remove Asbestos is not required for removal of nonfriable roofing material. The owner/operator shall maintain documentation to substantiate qualification for the exemption.

(b) A SWCAA approved Notification of Demolition ~~must be submitted to the Agency on Agency approved forms~~ is required prior to commencing any demolition activity.

(c) The approval date to perform a project will be the date that all required submittals and fees are received at SWCAA.

(i) For asbestos and demolition projects that are subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 working days following submittal of a complete notification.

(ii) For asbestos and demolition projects that are not subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 days following submittal of a complete notification.

(iii) The asbestos or demolition project may commence on the day following the notification period. Asbestos projects performed by the owner-occupant are not subject to this requirement but must provide prior notification.

(d) In no event shall a project or activity proceed on a date other than the date indicated on the notification.

(e) The duration of the asbestos project, maintenance activity, renovation, or demolition activity or project shall not exceed one (1) year beyond the original project starting date.

(f) The notification shall expire on the project completion date as specified by the owner or owner's agent unless amended prior to the completion date.

(g) A copy of the notification, all amendments and the asbestos inspection report shall be available for inspection at the project site at all times until completion of the project.

(h) For an asbestos project or demolition activity that will begin or end on a date other than the date(s) contained in the original notification, the owner or the owner's agent shall notify SWCAA ((~~in writing~~)) as soon as possible before the original start or end date. In no event shall a project or activity begin or end on a date other than the date indicated in the revised notification.

(2) **Advance Notification Period and Fee.** Any notification required by SWCAA 476-050(1) shall be considered incomplete until all the information required by SWCAA 476-050(1) is received by ((~~the Agency~~)) SWCAA and accompanied by the appropriate fee. The advance notification period and appropriate fee shall be determined as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(3) **Annual notification.** In lieu of the notification requirements of SWCAA 476-050(1) the owner or operator of a facility may submit to ((~~the Agency~~)) SWCAA, on the ((~~Agency's~~)) SWCAA approved form, an annual notification to conduct asbestos removal projects on one or more buildings, vessels, or structures at the facility during each calendar year for the purpose of scheduled maintenance or emergency repairs for removal of small quantities of asbestos-containing material as identified below. The requirements of SWCAA 476-050(1) shall not apply to asbestos projects undertaken during the calendar year at the applicable facility if all of the following conditions are met:

(a) Annual notifications shall be submitted to ((~~the Agency~~)) SWCAA for approval before commencing work on any asbestos projects specified in an annual notification.

(b) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section shall be limited to less than 260 linear feet on pipes and 160 square feet on other components.

(c) Any asbestos project involving at least 260 linear feet on pipes or 160 square feet or more on other components for each building, vessel, or structure at the facility shall be subject to ((-)) the notification requirements of SWCAA 476-050(1) and 476-050(2) and not the annual notification requirements.

(d) A copy of the annual notice shall be available for inspection at the property owner's or operator's office until the end of the calendar year.

(e) Asbestos-containing waste material generated from asbestos projects filed under an annual notification may be stored for disposal at the facility if all of the following conditions are met:

(i) All asbestos-containing waste material shall be treated in accordance with SWCAA 476-070(1);

(ii) Accumulated asbestos-containing waste materials collected from each asbestos project shall be kept in a controlled storage area posted with one (1) or more highly visible asbestos warning signs and accessible only to authorized persons; and

(iii) For storage of asbestos-containing waste material longer than 10 days, the owner/operator or owner's agent shall apply to SWCAA for a Temporary Asbestos Storage Facility Authorization unless the asbestos-containing waste material is handled as dangerous waste in accordance with WAC 173-303. Asbestos-containing waste material shall only be disposed of at sites operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction.

(f) Annual notifications shall be submitted by the facility owner or operator on forms provided by ((~~the Agency~~)) SWCAA. Notifications shall be submitted to ((~~the Agency~~)) SWCAA at least 10 days in advance of the start date and shall be accompanied by the annual fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(g) The facility owner or operator shall submit quarterly reports to ((~~the Agency~~)) SWCAA within fifteen (15) days after the end of each calendar quarter. Each quarterly report shall be submitted on forms provided by ((~~the Agency~~)) SWCAA or an alternate format approved by ((~~the Agency~~)) SWCAA.

(4) **Amendments.** An amended notification shall be submitted to ((~~the Agency~~)) SWCAA prior to deviating from any of the information contained in a notification as detailed below. Amended notifications addressed by this section shall be filed by the original applicant, received by ((~~the Agency~~)) SWCAA no later than the asbestos project date, and are limited to the following revisions:

(a) A change in the job size category because of identification of additional asbestos-containing material. In this case, the fee shall be increased accordingly and the total fee shall be equal to, but not exceed, the fee amount provided for the new job size category as specified in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098;

(b) The project starting or completion date, provided the total duration of the work does not exceed one (1) calendar year beyond the original starting date. The commencement date of the original advance notification period shall apply with no additional waiting period required for amended notifications. If an amended notification results in a job size cat-

egory that requires a waiting period and the original notification did not require a waiting period, the advance notification period shall commence on the date the original application was submitted;

(c) Name, mailing address, and telephone number of the owner or operator of the asbestos project site or operation;

(d) Waste disposal site, provided the revised waste disposal site is operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction;

(e) Method of removal or compliance procedures, provided the revised work plan meets the asbestos emission control and disposal requirements of SWCAA 476-060 and 450-070;

(f) Description, size (total square feet or number of floors), and approximate age of the building, vessel, or structure at the original address or location; and

(g) An amendment fee shall be incurred after the second revision to the original notification and for every subsequent revision thereafter in accordance with the current Consolidated Fee Scheduled established in accordance with SWCAA 400-098.

(5) **Emergencies.**

(a) ((~~The Agency~~)) SWCAA may waive the required advance notification period if the property owner or owner's agent demonstrates in writing to ((~~the Agency~~)) SWCAA that an asbestos project or demolition must be conducted immediately because of any of the following:

(i) There was a sudden, unexpected event that resulted in a public health or safety hazard; or

(ii) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; or

(iii) Asbestos-containing materials were encountered that were not identified during the asbestos inspection; or

(iv) The project must proceed to avoid imposing an unreasonable financial burden.

(b) Each emergency waiver request shall include a fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(c) If the emergency asbestos project occurs during ((~~non~~)) non-business hours, notification to SWCAA must occur no later than the next business day.

(6) **Abandoned Asbestos-Containing Material.** ((~~The Agency~~)) SWCAA may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

(7) **State of Emergency.** If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, ((~~the Agency~~)) SWCAA may temporarily waive part or all of the project fee(s) and notification period by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

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 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-060 Procedures for Asbestos Projects

(1) **Project requirements.** No person shall cause or allow work on an asbestos project unless the following are met, except as provided in SWCAA 476-060(2):

(a) Any work on an asbestos project shall be performed by a certified asbestos abatement contractor with certified asbestos workers under the direct, on-site supervision of a certified asbestos supervisor. Asbestos workers and asbestos supervisors must have a valid certification and identification card on-site. This requirement shall not apply to asbestos projects conducted in accordance with SWCAA 400-060(2) for owner-occupied, single-family dwellings performed by the owner/occupant.

(b) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. This includes asbestos projects performed by the owner-occupant at owner-occupied, single family dwellings.

(c) All asbestos containing material shall be kept adequately wet while being removed from any structure, building, vessel, or component.

(d) No visible emissions, including fallout or track out, shall result from an asbestos project.

(e) All asbestos-containing material that has been removed or may have fallen off components during the course of an asbestos project shall be:

(i) Kept adequately wet until collected for disposal;

(ii) Collected for disposal at the end of each working day;

(iii) Contained in a controlled area at all times until transported to a temporary asbestos storage site or waste disposal site;

(iv) Placed into a leak-tight container before removal from containment area; and

(v) Carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise handled in such a manner that may risk further damage to them; or transported to the ground via dust tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as a unit or in sections.

(f) Mechanical assemblies or components covered with, coated with, or containing asbestos-containing material, removed as a unit or in sections, shall be contained in a leak-tight wrapping after wetting and shall be labeled in accordance with SWCAA 476-070 (1)(a)(iii).

(i) For large components such as boilers, steam generators, and large tanks, the asbestos-containing material is not required to be removed or stripped if the component can be removed, stored, transported, and deposited at a waste disposal site or reused without disturbing or damaging the asbestos.

(ii) Metal components such as valves, fire doors, and reactor vessels that have internal asbestos-containing material do not require wetting and leak tight wrapping if:

(A) All access to the asbestos-containing material is welded shut; or

(B) The component has mechanical seals in place that separate the asbestos-containing material from the environment and these seals cannot be removed by hand.

(g) Local exhaust ventilation and collection systems used on an asbestos project shall:

(i) Be maintained to ensure the integrity of the system; and

(ii) When feasible, have one or more transparent plastic or glass viewing ports installed on the walls of the enclosure in such a manner that will allow for viewing inside the enclosure. When available, existing windows may be utilized for viewing ports.

(h) Local exhaust ventilation and collection systems, control devices, and vacuum systems, used on an asbestos project shall be equipped with a HEPA exhaust filter, maintained in good working order, and shall allow no visible emissions.

(2) **Exemptions for Owner-Occupied, Single-Family Residence.** The requirements of SWCAA 476-060 (1)(a) shall not apply to asbestos projects conducted in an owner-occupied, single-family residence by the resident owner of the residence.

(3) **Alternate Means of Compliance.**

(a) **Friable Asbestos-Containing Material Alternative Removal Methods** An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to ((~~the Agency~~)) SWCAA that the planned control method will be effective as the work practices contained in SWCAA 476-060(1) in controlling asbestos emissions. The property owner or the owner's agent shall document through air monitoring at the exhaust from the controlled area that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fibers/cc, ((~~8 hour~~)) 8-hour average. ((~~The Agency~~)) SWCAA may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternate removal method for cause.

(b) **Nonfriable Asbestos-Containing Material Alternative Removal Methods** An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if an AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to ((~~the Agency~~)) SWCAA that the planned control method will be equally as effective as the work practices in SWCAA 476-060(1) in controlling asbestos emissions. ((~~The Agency~~)) SWCAA may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternate removal method for cause.

(c) **Leaving Nonfriable Asbestos-Containing Material in Place During Demolition** Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates to ((~~the Agency~~)) SWCAA that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. No asbestos-containing material shall remain in place if the demolition involves burning or other activities that would result in the potential release of asbestos-containing material to the ambient air. ((~~The Agency~~)) SWCAA may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the asbestos-containing material remains nonfriable.

(4) **Exceptions for Hazardous Conditions**. Asbestos-containing material need not be removed prior to a demolition if the property owner or owner's agent demonstrates to ((~~the Agency~~)) SWCAA that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and may immediately collapse, or other conditions that are dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures as prepared by an AHERA project designer that will be followed for controlling asbestos emissions, including run off, during the demolition and disposal of the asbestos-containing waste material.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material

(1) **Disposal Requirements.** No person shall cause or allow work on an asbestos project unless the following procedures are employed during the collection, processing, packaging, or disposal of any asbestos-containing waste material:

(a) Treat all asbestos-containing waste material as follows:

(i) Adequately wet all asbestos-containing waste material;

(ii) After wetting, seal all asbestos-containing waste material in leak tight containers or wrapping to ensure that they remain adequately wet when deposited at a waste disposal site;

(iii) Permanently (indelible markers or labels made with indelible ink) label wrapped materials and each container with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the Occupational Safety and Health Administration. Permanently mark the label with the date the material was collected for disposal, the name of the waste generator, the name and affiliation of the certified asbestos supervisor((~~,~~)) (unless performed by owner-occupant at residential structure), and the location at

which the waste was generated prior to removal from the controlled area;

(iv) Ensure that the exterior of each container is free of all asbestos residue;

(v) Exhibit no visible emissions during any of the operations required by this section; and

(vi) Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of, at a waste disposal site approved to accept asbestos-containing waste material.

(b) All asbestos-containing waste material shall be deposited within 10 days after collection at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction. Asbestos-containing waste material may remain onsite longer than 10 days if the facility has a current Temporary Asbestos Storage Facility Authorization and the asbestos-containing waste material is stored within that temporary storage facility as provided in SWCAA 476-070(3).

(c) All asbestos-containing waste material, handled as dangerous waste in accordance with WAC 173-303, shall be excluded from the requirements of SWCAA 476-070 (1)(a)(iii) and 476-070 (1)(b).

(2) **Waste Tracking Requirements.** No person shall cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

(a) Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

(i) The name, address, and telephone number of the waste generator

(ii) The approximate quantity in cubic meters or cubic yards.

(iii) The name and telephone number of the disposal site operator.

(iv) The name and physical site location of the disposal site.

(v) The date transported.

(vi) The name, address, and telephone number of the transporter.

(vii) A certification from the waste generator that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

(b) Provide a copy of the waste shipment record to the transfer station/disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to SWCAA 476-060(3) shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

(c) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, the waste generator shall contact the transporter or the owner or operator of the disposal site to determine the status of the waste shipment.

(d) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to ((~~the Southwest Clean Air Agency~~)) SWCAA. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) Retain a copy of all waste shipment records for 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to ((~~the Agency~~)) SWCAA upon request.

(3) **Alternative Storage Method - Temporary Asbestos Storage Facility.** The owner or operator of a licensed asbestos abatement company or disposal facility may apply to ((~~the Agency~~)) SWCAA to establish a temporary facility for the purpose of collecting and temporarily storing asbestos-containing waste material.

(a) No person shall cause or allow the operation of a temporary asbestos storage facility without the prior written approval of ((~~the Agency~~)) SWCAA.

(b) The owner or operator must submit a complete application for establishment of a temporary asbestos storage facility on forms provided by ((~~the Agency~~)) SWCAA. When approved, an Asbestos Storage Facility Authorization will be returned to the owner or operator by SWCAA to be posted at the entrance to the facility or on file at the facility office.

(c) A temporary asbestos storage facility shall meet the following general conditions:

(i) Asbestos-containing waste material must be stored in a leak tight container in a secured building or in a secured exterior enclosure; and

(ii) The secured building or enclosure must be locked except during transfer of asbestos-containing waste material.

(4) **Alternative Disposal Method - Asbestos-Cement Water Pipe.** Asbestos-cement pipe used on public right-of-ways or public easements shall be excluded from the disposal requirements of SWCAA 476-070 (1)(b) if the following condition is met:

(a) The asbestos-cement pipe is maintained intact, not crushed or broken, and is left in place under at least 3 feet of backfill and the location noted on deeds, easements and other applicable property and legal documents. Prior written approval from ((~~the Agency~~)) SWCAA is required. If the asbestos-cement pipe has been crushed or broken and left in place, the location shall be subject to the active waste disposal site requirements of 40 CFR 61.154.

WSR 19-23-002
PROPOSED RULES
POLLUTION LIABILITY INSURANCE AGENCY

[Filed November 6, 2019, 12:30 p.m.]

Continuance of WSR 19-20-123.

Preproposal statement of inquiry was filed as WSR 17-16-146.

Title of Rule and Other Identifying Information: This proposal extends the intended adoption date as to provide additional time for public comment for chapter 374-20 WAC, Public records.

Date of Intended Adoption: No earlier than December 6, 2019.

Submit Written Comments to: Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, fax 360-407-0509, 800-822-3905, by December 6, 2019.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, fax 360-407-0509, TTY 700 [711] or 800-833-6388, email rules@plia.wa.gov, by December 6, 2019.

Reasons Supporting Proposal: The pollution liability insurance agency seeks to extend the public comment period for this proposal.

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

November 6, 2019
Phi V. Ly
Legislative and
Policy Manager

WSR 19-23-003
PROPOSED RULES
POLLUTION LIABILITY INSURANCE AGENCY
[Filed November 6, 2019, 12:31 p.m.]

Continuance of WSR 19-20-122.

Preproposal statement of inquiry was filed as WSR 17-16-144.

Title of Rule and Other Identifying Information: This proposal extends the intended adoption date as to provide additional time for public comment for chapter 374-80 WAC, Advice and technical assistance program.

Date of Intended Adoption: No earlier than December 6, 2019.

Submit Written Comments to: Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, fax 360-407-0509, 800-822-3905, by December 6, 2019.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, fax 360-407-0509, TTY 700 [711] or 800-833-6388, email rules@plia.wa.gov, by December 6, 2019.

Reasons Supporting Proposal: The pollution liability insurance agency seeks to extend the public comment period for this proposal.

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

November 6, 2019
Phi V. Ly
Legislative and
Policy Manager

WSR 19-23-004
PROPOSED RULES
POLLUTION LIABILITY INSURANCE AGENCY
[Filed November 6, 2019, 12:32 p.m.]

Continuance of WSR 19-20-121.

Preproposal statement of inquiry was filed as WSR 17-23-126.

Title of Rule and Other Identifying Information: This proposal extends the intended adoption date as to provide additional time for public comment for chapter 374-100 WAC, State Environmental Policy Act (SEPA).

Date of Intended Adoption: No earlier than December 6, 2019.

Submit Written Comments to: Phi V. Ly, P.O. Box 40930, Olympia, WA 98504-0930, email rules@plia.wa.gov, fax 360-407-0509, 800-822-3905, by December 6, 2019.

Assistance for Persons with Disabilities: Contact Xyzlinda Marshall, phone 360-407-0515, fax 360-407-0509, TTY 700 [711] or 800-833-6388, email rules@plia.wa.gov, by December 6, 2019.

Reasons Supporting Proposal: The pollution liability insurance agency seeks to extend the public comment period for this proposal.

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

November 6, 2019
Phi V. Ly
Legislative and
Policy Manager

WSR 19-23-014
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 7, 2019, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-026.

Title of Rule and Other Identifying Information: Chapter 260-24 WAC, Association officials and employees.

Hearing Location(s): On January 10, 2020, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 5, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates duties and responsibilities for racing officials.

Reasons Supporting Proposal: The model rules of racing have been updated to add duties for stewards, paddock judge, and starters to reflect current practices.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 7, 2019
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 10-07-046, filed 3/11/10, effective 4/11/10)

WAC 260-24-510 Stewards. (1) General authority:

(a) The stewards for each race meet are responsible to the executive secretary for the conduct of the race meet and the initial agency determination of alleged rule violations in accordance with these rules;

(b) The stewards will enforce the rules of racing in chapters 260-12 through 260-84 WAC, excluding chapters 260-49 and 260-75 WAC. The stewards will take notice of alleged misconduct or rule violations and initiate investigations into such matters;

(c) The stewards' authority includes regulation of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to ((~~insure~~)) ensure compliance with these rules;

(d) All nominations, entries, and scratches will be monitored by a steward;

(e) The stewards have authority to resolve conflicts or disputes related to violations of the rules of racing and to discipline violators in accordance with the provisions of these rules;

(f) The stewards have the authority to interpret the rules and to decide all questions of racing. The stewards of the race meet are hereby given authority to exercise their full power, recommending to the commission the imposition of more severe penalties if necessary.

(2) The stewards' period of authority will commence and terminate at the direction of the executive secretary. One steward will be designated as the presiding steward by the executive secretary.

(3) Stewards ruling conference regarding violations of rules of racing:

(a) The stewards have authority to charge any licensee or other person with a violation of these rules, to make rulings and to impose penalties including the following:

(i) Issue a written reprimand or warning;

(ii) Assess a fine not to exceed $((~~2,500.00~~)) 5,000.00, except as provided in chapter 260-84 WAC;

(iii) Assess multiple medication violation points;

(iv) Require forfeiture or redistribution of purse or award, when specified by applicable rules;

(((~~iv~~))) (v) Place a licensee on probation;

(((~~v~~))) (vi) Grant a license with conditions;

(((~~vi~~))) (vii) Suspend a license or racing privileges for not more than one year per violation;

(((~~vii~~))) (viii) Revoke or deny a license; or

(((~~viii~~))) (ix) Exclude from facilities under the jurisdiction of the commission.

(b) The stewards' imposition of reprimands, fines and suspensions will be based on the penalties in chapter 260-84 WAC.

For any violation not specifically listed in chapter 260-84 WAC, the stewards have discretion to impose the penalties as provided in (a) of this subsection.

(c) The stewards may direct a jockey to meet with the film analyst whenever a jockey is involved in questionable, unsafe or potentially dangerous riding. Jockeys referred to the film analyst must appear when directed. Failure to appear when directed will be considered a violation of the rules of racing for which penalties may be imposed.

(d) The stewards have the authority to conduct a ruling conference, and the authority to:

(i) Direct the attendance of witnesses and commission employees;

(ii) Direct the submission of documents, reports or other potential evidence;

(iii) Inspect license documents, registration papers and other documents related to racing or the rule violation;

(iv) Question witnesses; and

(v) Consider all relevant evidence.

(e) The stewards must serve notice of a conference to person(s) alleged to have committed a violation, which must contain the following information:

(i) A statement of the time and place the conference will be held;

(ii) A reference to the particular sections of the WAC involved;

(iii) A short and plain statement of the alleged violation; and

(iv) A statement that if the person does not appear, the ruling will be made in his/her absence, and that failure to appear will be considered a separate violation of the rules of racing.

(f) Failure to appear for a ruling conference will be considered a violation of the rules of racing for which penalties may be imposed.

(g) It is the duty and obligation of every licensee to make full disclosure to the board of stewards and commission investigators conducting an investigation into any alleged violation of these rules, of any knowledge he/she possesses of a violation of any rule of racing. No person may refuse to respond to questions before the stewards or commission investigators on any relevant matter within the authority of the stewards or commission, except in the proper exercise of a legal privilege, nor may any person respond falsely before the stewards or to commission investigators.

(h) At the ruling conference, the stewards will allow the person alleged to have committed a violation to make a statement regarding the alleged violation.

(i) All ruling conferences will be recorded.

(j) Every ruling by the stewards from a ruling conference must be served in writing on the person(s) or parties found in violation within five days and must include:

(i) Time and place the ruling was made;

(ii) Statement of rules violated;

(iii) Details of the violation;

(iv) Penalties to be imposed;

(v) Procedure for requesting a hearing before the commission to challenge the ruling; and

(vi) Plain statement of the options of the person found in violation, which must include:

(A) Accepting the penalty imposed by the stewards; or

(B) Requesting a hearing before the commission challenging the stewards' ruling within seven days of service of the ruling, with the exception of riding violations which must be challenged within seventy-two hours of service of the ruling.

(k) Penalties imposed by the stewards, except for those penalties in (l), (m), and (q) of this subsection, will be stayed if a request for hearing before the commission is filed within the seven days of service of the ruling, or seventy-two hours in the case of riding violations.

(l) If the stewards determine that a person's actions constitute an immediate and/or substantial danger to human and/or equine health, safety, or welfare, and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. The hearing before the commission will occur within thirty days of filing the request for hearing before the commission.

(m) If the stewards deny an application for license or suspend or revoke an existing license for any reasons listed in WAC 260-36-120(2), and a request for hearing before the commission is filed within seven days of service of the ruling, no stay will be granted except by a hearing before the commission. A hearing before the commission over whether or not to grant a stay will occur at the discretion of the commission.

(n) The stewards' ruling will be posted and a copy provided to the racing association.

(o) If a person does not file a request for hearing before the commission within seven days or in the format required by chapter 260-08 WAC, then the person is deemed to have waived his or her right to a hearing before the commission. After seven days (or seventy-two hours for riding violations), if a request for hearing before the commission has not been filed, the stewards' penalty will be imposed. All fines are due immediately following the period a person has to challenge a ruling, unless otherwise approved by the stewards.

(p) "Service" of the notice of ruling conference or a stewards' ruling may be by either personal service to the person or by depositing the notice of ruling conference or stewards' ruling into the mail to the person's last known address in which case service is complete upon deposit in the U.S. mail.

(q) If the stewards determine that a person's actions constitute an immediate, substantial danger to human and/or equine health, safety, or welfare, the stewards may enter a ruling summarily suspending the license and/or ejecting the person from the grounds pending a ruling conference before the board of stewards. A summary suspension takes effect immediately on issuance of the ruling. If the stewards suspend a license under this subsection, the licensee is entitled to a ruling conference before the board of stewards, not later than five days after the license was summarily suspended. The licensee may waive his/her right to a ruling conference before the board of stewards on the summary suspension.

(4) Protests, objections and complaints. The stewards will ensure that an investigation is conducted and a decision is rendered in every protest, objection and complaint made to them.

(5) Stewards' presence:

(a) On each racing day at least one steward will be on duty at the track beginning three hours prior to first race post time.

(b) Three stewards must be present in the stewards' stand during the running of each race.

(6) Order of finish for parimutuel wagering:

(a)(i) The stewards will determine the official order of finish for each race in accordance with these rules of racing;

(ii) The order of finish will be determined when each horse's nose reaches the finish line. In the event the exact position of a nose cannot be determined, a dead heat may be declared.

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, is final for purposes of distribution of the parimutuel wagering pool.

(7) The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a parimutuel pool for a race or races, if such action is necessary to protect the integrity of parimutuel wagering.

(8) Records and reports:

(a) The stewards will prepare a weekly report of their regulatory activities. The report will contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, protests, objections, horses sent to the test barn, euthanized or vanned off during the race card, complaints and conferences. The report will be filed with and approved by the executive secretary;

(b) Not later than seven days after the last day of a race meet, unless approved by the executive secretary, the presiding steward will submit a written report regarding the race meet to the executive secretary. The report will contain:

(i) The stewards' observations and comments regarding the conduct of the race meet, the overall conditions of the association grounds during the race meet; and

(ii) Any recommendations for improvement by the association or action by the commission.

(c) At a class 1 race meet, the stewards will prepare a daily report detailing their actions and observations during each day's race program. The report should contain the date, weather and track condition, scratches, claims, inquiries and objections, and any other information requested by the commission. The report will be made available to the public.

(9) Stewards' list:

(a) The stewards will maintain a stewards' list of the horses which are ineligible to be entered in a race because of

poor or inconsistent performance or behavior on the racetrack that may endanger the health or safety of other participants in racing;

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse;

(c) A horse may be placed on the stewards' list when an unexcused scratch occurs per WAC 260-40-010;

(d) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing;

(((~~(d)~~))) (e) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of the horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

(((~~(e)~~))) (f) An owner or trainer who disagrees with the stewards' decision of placing or maintaining a horse on the stewards' list may request and be granted a stewards' ruling conference to challenge the decision of the stewards.

(10) The stewards will make recommendations for rule changes and protocols for the regulation of the race meet.

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-570 Paddock judge. The paddock judge is responsible for performing the following duties:

(1) Supervise the horses in the paddock and saddling enclosure and ensure that the saddling of all horses are done by or under the direct supervision of the trainer or their assistant trainer as listed in the program, unless prior approval has been granted by the stewards;

(2) Inspect all equipment of each horse to ensure safety;

(3) Monitor any equipment as requested by the board of stewards;

(4) Prohibit any change of equipment listed in WAC 260-44-010 without approval of the board of stewards;

(5) Ensure that all horses are generally mounted at the same time, and all horses leave the paddock for the post parade in the proper sequence;

(6) Supervise paddock schooling of all horses approved for schooling;

(7) Place and remove horses on the paddock list for poor or unruly behavior in the paddock. Horses placed on the paddock list will be refused entry until the horse has been satisfactorily schooled in the paddock. Schooling will be under the direct supervision of the paddock judge or his/her designee;

(8) Ensure that only properly authorized persons are permitted in the paddock; and

(9) Report to the stewards any unusual activities in violation of these rules.

AMENDATORY SECTION (Amending WSR 13-03-058, filed 1/11/13, effective 2/11/13)

WAC 260-24-580 Starter and assistant starters. (1) The starter is responsible for the following duties:

(a) Approve and submit a list of all horses which have never started to ensure that the horse is familiar with, and capable of, breaking from the starting gate;

(b) Ensure all participants have an equal opportunity to a fair start;

(c) Supervise the assistant starters;

(d) Provide a sufficient number of assistant starters for each race;

(e) Assign the starting gate stall positions to assistant starters and notify the assistant starters of their respective stall positions, or assign a foreman to act in his behalf, before post time for each race;

(f) Assess and make recommendations to the board of stewards on the ability of each person applying for an initial jockey or exercise riders license in breaking from the gate and working a horse in the company of other horses;

(g) Load horses into the gate in any order necessary to ensure a safe and fair start;

(h) Recommend to the stewards horses that should be scratched because a horse at the starting gate is refusing to load or is unruly;

(i) Maintain a record of the horses schooling and their behavior at and in the starting gate under their supervision.

(2) The starter will place and remove horses on the starter's list for poor or unruly behavior in the starting gate. Horses placed on the starter's list will be refused entry until the horse has been satisfactorily schooled in the starting gate. Schooling will be under the direct supervision of the starter or his designee.

(3) The starter has complete authority over the starting gate, the starting of horses, and the authority to give orders, which are not in conflict with these rules.

(4) The starter will appoint all assistant starters. Assistant starters must first demonstrate they are adequately trained to safely handle horses in the starting gate. In emergencies the starter may appoint qualified licensed individuals to act as substitute assistant starters.

All assistant starters, and anyone appointed by the starter to act as a substitute assistant starter, must wear a securely fastened safety vests and helmets, which meet the standards in WAC 260-12-180 (1) and (2), at all times when performing their duties.

(5) Assistant starters may not:

(a) Handle or take charge of any horse in the starting gate without the expressed permission of the starter;

(b) Impede the start of a race;

(c) Strike a horse with ((~~a whip~~)) any object;

(d) Use a device, unless approved by the stewards, to assist in the loading of a horse into the starting gate;

(e) Ear a horse with anything other than a hand;

(f) Slap, boot or otherwise dispatch a horse from the starting gate;

(((~~(f)~~))) (g) Strike or use abusive language to a jockey; or

(((~~(g)~~))) (h) Accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(6) The starter and assistant starters will report all unauthorized activities to the stewards.

WSR 19-23-043
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed November 13, 2019, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-22-099.

Title of Rule and Other Identifying Information: Chapter 314-55 WAC, Marijuana licenses, application process, requirements, and reporting, pertaining specifically to enforcement of marijuana regulations. The Washington state liquor and cannabis board (board) proposes new sections, amendments, and repeal of existing rule that shift focus to a compliance and education-based regulatory approach designed to encourage and support licensee success. This proposal also implements the majority of the requirements and directives of ESSB 5318 (chapter 394, Laws of 2019). The voluntary compliance program mandated by ESSB 5318 is being developed under a separate rule-making project.

Hearing Location(s): On January 8, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: January 22, 2020.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by January 8, 2020.

Assistance for Persons with Disabilities: Contact Claris Nhanabu [Nnanabu], Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov [Claris.Nnanabu@lcb.wa.gov], by January 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules significantly restructure and revise existing rules regarding enforcement of marijuana regulation in Washington state. The proposal shifts focus to a compliance and education-based approach designed to encourage and support licensee success. Among other things, the rule proposal establishes a process for the issuance of a notice of correction as opposed to a civil penalty when appropriate; reduces the cumulative effect of escalating penalties from three to two years; provides a deferral option; restructures existing penalty grids by establishing penalty categories based on violation severity and relationship to public health and safety; significantly reduces the number of violations that could result in license cancellation, while balancing penalties across license types; reincorporates and associates statutory references with violation type; reduces all fines by fifty percent; and incorporates the mandates and requirements of ESSB 5318, recently codified in chapter 69.50 RCW.

Reasons Supporting Proposal: In 2013, the board adopted rules that established penalties for violations of marijuana statutes and rules. Over time, those statutes and rules have been revised in response to industry evolution, business practices and market fluctuation. In late 2018, the board initiated inquiry into revising rules related to the marijuana penalty framework by approving a broadly scoped preproposal statement of inquiry (CR-101) for chapter 314-55 WAC. Shortly thereafter, ESSB 5318 (chapter 324, Laws of 2019), originally introduced in February 2019 guided and directed activities associated with that inquiry. ESSB 5318 provided several directives that are realized in this proposal. These proposed new rule sections and amendments, in addition to proposed technical and clarifying revisions, establish a revised penalty structure designed to support licensee success, while supporting the overarching agency goal of ensuring the highest level of public safety by continually improving and enforcing regulations that reflect the current, dynamic regulatory environment.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Statute Being Implemented: ESSB 5318 (chapter 394, Laws of 2019), codified in chapter 60.50 RCW.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation and Enforcement: Justin Nordhorn, Chief, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iv) because the rules only clarify language without changing its effect. Additionally, a cost-benefit analysis is not needed under RCW 34.05.328 (5)(b)(v) because the content of the rules are explicitly and specifically dictated by statute.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(3): WAC 314-55-502 (new), 314-55-505 (amended), 314-55-5055 (new), 314-55-506 (amended), 314-55-507 (amended), 314-55-509 (new), 314-55-520 (new), 314-55-521 (new), 314-55-522 (new), 314-55-523 (new), 314-55-524 (new), 314-55-525 (new [amended]), 314-55-540 (amended).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule proposal does not create any additional compliance costs, nor does it create any additional administrative, or regulatory burden. Rather, the reduction of all penalties by fifty percent, the reduction of the number of violations that may result in

license cancellation, the addition of a deferral option, and the addition of the option to issue a notice of correction as opposed to a civil penalty where appropriate are anticipated to significantly reduce licensee compliance costs and regulatory burden, while increasing compliance success and ultimately supporting business viability and growth.

November 13, 2019
Jane Rushford
Chair

NEW SECTION

WAC 314-55-502 Notice of correction. (1) The board may issue a notice of correction to a licensee during a nontechnical assistance inspection or visit as described in this chapter if the board becomes aware of conditions that are not in compliance with chapters 69.50 and 69.51A RCW, and this chapter.

(2) The notice of correction must include and clearly state:

(a) A detailed description of the noncompliant condition;

(b) The text of the specific section or subsection of the applicable rule;

(c) A statement of what is required to achieve compliance;

(d) The date by which the board requires compliance to be achieved;

(e) Notice of the means to contact any technical assistance services provided by the board or others; and

(f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the board.

(3) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(4) If the licensee does not comply with the notice of correction, the board may issue an administrative violation notice consistent with WAC 314-55-505 for the violations identified in the notice of correction.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-505 ((~~What are the procedures for notifying a licensee of an alleged violation of a WSLCB statute or regulation?~~)) Administrative violation notice. (1) ((~~When an enforcement officer believes that a licensee has violated a WSLCB statute or regulation, the officer may~~)) The board may issue an administrative violation notice without issuing a notice of correction if:

(a) The licensee is not in compliance with chapters 69.50 and 69.51A RCW, this chapter, or both, and the noncompliance poses a direct or immediate threat to public health and safety;

(b) The licensee has previously been subject to an enforcement action or written notice for a violation of the same statute or rule within the same penalty category, the notice of correction for the violation has already been issued, the licensee failed to timely comply with the notice, and such notice is not subject to a pending request to the board to extend the time to achieve compliance; or

(c) The licensee has failed to respond to prior administrative violation notices or has outstanding unpaid monetary penalties; and

(d) The board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product out of the regulated market or sales across state lines;

(ii) Furnishing of marijuana product to persons under twenty-one years of age;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;

(iv) The commission of nonmarijuana-related crimes; or

(v) Knowingly making a misrepresentation of fact to the board, an officer of the board, or an employee of the board related to conduct or action that is, or is alleged to be, any of the violations identified in (d)(i) through (iv) of this subsection.

(2) The board will prepare an administrative violation notice (((~~(AVN)~~))) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(((~~(2) The AVN~~))) (3) The administrative violation notice will include:

(a) A ((~~complete narrative~~)) detailed description of the alleged violation(s) ((~~the officer is charging~~));

(b) The date(s) of the violation(s);

(c) ((~~A copy of the law(s) and/or regulation(s) allegedly violated;~~)) The text of the specific section or subsection of rule;

(d) An outline of the licensee's resolution options as outlined in WAC ((~~314-55-510~~)) 314-55-5055; and

(e) The recommended penalty((~~.~~

~~(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.~~

~~(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty~~)) as described in this chapter, and including a description of known mitigating and aggravating circumstances considered in the penalty determination.

NEW SECTION

WAC 314-55-5055 Resolution options. (1) A licensee must respond to an administrative violation notice within twenty calendar days from receipt of the notice. The response must be submitted on a form provided by the board. The licensee may:

(a) Accept the recommended penalty identified in the administrative violation notice;

(b) Request a settlement conference in writing;

(c) Request an administrative hearing in writing.

(2)(a) If a licensee does not respond to an administrative violation notice within twenty calendar days of receipt of the notice, recommended penalties including, but not limited to, suspension, monetary penalties, and destruction of inventory may take effect on the twenty-first day.

(b) If the recommended penalty is monetary and does not include a suspension, inventory destruction, or both, the licensee must pay a twenty-five percent late fee in addition to the recommended monetary penalty.

(i) The board must receive payment of the monetary penalty and twenty-five percent late fee no later than thirty days after the administrative violation notice receipt date.

(ii) Payments received more than thirty days after the administrative violation notice receipt date are subject to an additional twenty-five percent late fee.

(iii) Licensees who do not respond to an administrative violation notice will not be eligible to renew their marijuana license.

(3) Licensees who do not pay monetary penalties for two or more administrative violation notices in a two-year period will not be eligible to renew their marijuana license.

(4) A licensee may request a settlement conference to discuss the board's issuance of an administrative violation notice issued under this chapter. The hearing officer or designee of the board will arrange the date, time, and place of the settlement conference. A settlement agreement provides that the licensee accepts the allegations contained in the administrative violation notice.

(a) The purpose of the settlement conference is to:

(i) Discuss the circumstances associated with the alleged violation(s), including aggravating or mitigating factors;

(ii) Discuss the recommended penalties; and

(iii) Attempt to reach agreement on the appropriate penalty and corrective action plan for the administrative violation notice.

(b) During a settlement conference, a licensee issued an administrative violation notice may request deferral of an administrative violation notice if all of the following criteria are met:

(i) The alleged violation is the first violation in a violation category;

(ii) The licensee has no other violation history in that penalty category within a two-year window; and

(iii) The licensee submits a plan to correct, remedy, or satisfy identified violations as described in the administrative violation notice including, but not limited to, monetary penalties.

(c) If the licensee is not issued any administrative violation notices or any other notice of noncompliance during the year following approval of the deferral of administrative violation, the record of administrative violation notice will not be considered for licensing renewal or penalty escalation.

(d) If the licensee is issued an administrative violation notice or any other notice of noncompliance at any time during the year following approval of the deferral of administrative violation, the record of the administrative violation notice will remain on the licensee's licensing history, and the original sanction for the deferred violation will be implemented based on the frame established in the settlement agreement, or ten days from the date of default.

(5) The hearing officer or designee will prepare a settlement agreement. The agreement must:

(a) Include the terms of the agreement regarding an alleged violation or violations by the licensee of chapters 69.50 and 69.51A RCW, any part of chapter 314-55 WAC, and any related penalty or licensing restriction; and

(b) Be in writing and signed by the licensee or the licensee's designee and the hearing officer or designee.

(6) If a settlement agreement is entered between a licensee and a hearing officer or designee of the board at or after a settlement conference, the terms of the settlement agreement must be given substantial weight by the board.

(7) The hearing officer or designee will forward the settlement agreement to the board or designee for final approval. If the board, or designee approves the settlement agreement, a copy of the signed agreement will be sent to the licensee, and will become part of the licensing history, unless otherwise specified in this chapter.

(8) If the board, or designee, does not approve the settlement agreement, the licensee will be notified of the decision in writing. The licensee may:

(a) Renegotiate the settlement agreement with the hearing officer or designee; or

(b) Accept the originally recommended penalty; or

(c) Request a hearing on the administrative issues identified in the administrative violation notice.

(9) Monetary penalty collection. If monetary penalties are assessed as part of an administrative violation, settlement agreement, or both, licensees must submit payment to the board in a time frame established by the board, consistent with subsection (2)(a) and (b) of this section.

(a) If a licensee does not timely submit payment of any monetary fine, the board will begin collection or other appropriate action.

(b) The board will provide a notice of collection action to the licensee. The notice of collection action establishes the licensee as a debtor for purposes of debt collection.

(c) If the licensee does not respond to the notice of collection within thirty days, the board may:

(i) Assess a twenty-five percent late fee consistent with subsection (2)(a) of this section; and

(ii) Assign the debt to a collection agency.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-506 ((~~What is the process once the WSLCB summarily suspends a marijuana license?~~)) Summary license suspension. (1) The ((~~WSLCB~~)) board may summarily suspend any license after the ((~~WSLCB's~~)) board's enforcement division has:

(a) Completed a preliminary staff investigation of the violation; and

(b) Upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this ((~~provision shall take effect~~)) section is effective immediately upon personal service of the summary suspension order on the licensee or employee thereof ((~~of the summary suspension order unless otherwise provided in the order~~)).

(3) When a license has been summarily suspended by the ((~~WSLCB~~)) board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing ((~~shall~~)) will be held within ninety calendar days of the effective date

of the summary suspension ordered by the ((~~WSLCB~~)) board. The ninety-day period may be extended for good cause.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-507 ((~~How may a licensee challenge the summary suspension of his or her marijuana license?~~)) Petition for stay. (1) ((~~Upon summary suspension of a license by the WSLCB pursuant to~~)) When the board summarily suspends a license under WAC 314-55-506, an affected licensee may petition the ((~~WSLCB~~)) board for a stay of suspension ((~~pursuant to RCW 34.05.467 and 34.05.550(1)~~)). A petition for a stay of suspension must be received by the ((~~WSLCB~~)) board within ((~~fifteen~~)) ten calendar days of service of the summary suspension order on the licensee. The petition for stay ((~~shall state the basis on which the stay is sought~~)) must clearly describe the basis for the stay.

(2) A hearing ((~~shall~~)) will be held before an administrative law judge within fourteen calendar days of receipt of a timely petition for stay. The hearing ((~~shall be~~)) is limited to consideration of whether a stay should be granted, or whether the terms of the suspension ((~~may~~)) will be modified to allow the conduct of limited activities under current licenses ((~~or permits~~)).

(3) ((~~Any~~)) A hearing conducted ((~~pursuant to~~)) under subsection (2) of this section ((~~shall~~)) will be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing ((~~shall~~)) must consist of the documentary information upon which the summary suspension was based. The licensee is permitted to supplement the record with additional documentation during the brief adjudicative proceeding. The licensee ((~~or permit holder shall have the burden of demonstrating~~)) must demonstrate by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, ((~~elimination of~~)) income alone from licensed activities ((~~shall not be~~)) is not deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay ((~~shall be~~)) is effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-55-509 Penalty structure. (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations of a severity that would make a license eligible for cancellation on a first offense;

(b) Category II: Violations that create a direct or immediate threat to public health, safety, or both;

(c) Category III: Violations that create a potential threat to public health, safety, or both;

(d) Category IV: Significant regulatory violations;

(e) Category V: Procedural and operational violations;

(f) Category VI: Statutory violations.

(2) For purposes of assessing penalties, only violations occurring in the two-year time period immediately preceding the date of the violation will be considered unless otherwise provided in this chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein. Such deviations will be determined on a case-by-case basis, considering mitigating and aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a marijuana license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

(4) For violations that occurred before the effective date of these rules, enforcement action will be based on the rules that were in effect on the date the violation occurred. Subsection (2) of this section shall apply to all enforcement actions regardless of the date the violation occurred.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-520 ((~~Group 1 violations against public safety.~~)) Category I. ((~~Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The WSLCB may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4). Group 1 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.~~

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Furnishing to minor: Sale or otherwise provide marijuana and/or paraphernalia to a person under twenty-one years of age. Chapter 314-55 WAC Chapter 69.50 RCW	Retailer/transporter: 10-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Retailer/transporter: 30-day suspension Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine	Cancellation of license	
Allowing a minor to frequent retail store. Chapter 69.50 RCW	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Allowing a minor to frequent a nonretail licensed premises or occupy a transport vehicle. Chapter 314-55 WAC	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Employee under legal age. Chapter 69.50 RCW	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Opening and/or consuming marijuana on a retail licensed premises. Chapter 69.50 RCW	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Conduct violations: **Criminal conduct:** Permitting or engaging in criminal conduct. **Disorderly conduct** by licensee or employee, or permitting on premises. Chapter 314-55 WAC **Licensee and/or employee** intoxicated on the licensed premises. Chapter 314-55 WAC	Retailer/transporter: 10-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Retailer/transporter: 30-day suspension Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine	Cancellation of license	

~~Violation Type~~	~~1st Violation~~	~~2nd Violation in a three-year window~~	~~3rd Violation in a three-year window~~	~~4th Violation in a three-year window~~
~~**Refusal** to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. Chapter 314-55 WAC~~	~~Retailer/transporter: 10-day suspension or $2,500 monetary option~~ ~~Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine~~	~~Retailer/transporter: 30-day suspension~~ ~~Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine~~	~~Cancellation of license~~	
~~**Marijuana purchased from an unauthorized source.** Chapter 69.50 RCW~~	~~Cancellation of license~~			
~~**Marijuana sold to an unauthorized source.** Chapter 69.50 RCW~~	~~Cancellation of license~~			
~~**Operating an unapproved CO_2 or hydrocarbon extraction system.** Chapter 314-55 WAC~~	~~Cancellation of license~~			
~~**Condition of suspension violation: Failure to follow any suspension restriction while marijuana license is suspended (retailer).** Chapter 314-55 WAC~~	~~Original penalty plus 10-day suspension with no monetary option~~	~~Cancellation of license~~		
~~**Sales in excess of transaction limitations.** Chapter 69.50 RCW Chapter 314-55 WAC~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~))	

Violations of a severity that would make a license eligible for cancellation on a first offense. The board may not cancel a license for a single violation, unless it can prove a Category I violation by a preponderance of the evidence.

Category I
Violations of a Severity That Would Make a License Eligible for Cancellation on the First Offense

Violation Type	1st Violation	2nd Violation in a Two-year Window
Marijuana purchased from an unlicensed entity. WAC 314-55-083(4)	License cancellation	
Marijuana sold to an unlicensed, nonretail source. Illegal sales out of the licensed market place. WAC 314-55-083(4)	License cancellation	
Condition of suspension violation: Failure to follow any suspension restriction while marijuana license is suspended. WAC 314-55-540	Original penalty plus 10-day suspension with no monetary option	License cancellation

Violation Type	1st Violation	2nd Violation in a Two-year Window
Transportation or storage of marijuana to or from an unlicensed source, diversion of product, or both. WAC 314-55-083(4)	License cancellation	
Transportation of marijuana outside of Washington state boundaries. RCW 69.50.342 (1)(k) RCW 69.50.345(10) WAC 314-55-310(1)	License cancellation	
True party of interest (TPI). Allowing a person to exercise ownership or control if the person would not have qualified based on affiliation with a criminal enterprise as described in chapter 69.50 RCW. WAC 314-55-035(1)	License cancellation	
Financier. Receiving money from a financier that was not disclosed to or approved by the board when the financier has a criminal history demonstrating an affiliation with criminal enterprises, gangs, or cartels; or the money provided by a financier originated from criminal enterprises, gangs, or cartels. WAC 314-55-035(4)	License cancellation	

NEW SECTION

WAC 314-55-521 Category II. Violations that create a direct or immediate threat to public health, safety, or both.

Category II
Violations That Create a Direct or Immediate Threat to Public Health, Safety, or Both

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Furnishing to persons under twenty-one years of age, except as allowed in RCW 60.50.357. RCW 69.50.354 WAC 314-55-079(1)	5-day suspension or $1,250 monetary option	10-day suspension or $7,500 monetary option	30-day suspension	License cancellation
Conduct violations: **Criminal conduct:** Permitting or engaging in criminal conduct, or both. **Disorderly conduct, or apparent intoxication of** a licensee or employee, or permitting on premises. Title 9 RCW Title 9A RCW WAC 314-55-110 (4)(b)	5-day suspension or $1,250 monetary option	10-day suspension or $7,500 monetary option	30-day suspension	License cancellation
Operating an unapproved CO^2 or hydrocarbon extraction system. WAC 314-55-104	$10,000 monetary fine	License cancellation		

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Intentional use of unauthorized pesticides, soil amendments, fertilizers, other crop production aids. RCW 69.50.342 WAC 314-55-084	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine and destruction of affected marijuana	Tier 1: $7,500 Tier 2: $15,000 Tier 3: $22,500 monetary fine and destruction of affected marijuana	License cancellation	
Adulterated usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-077 (5)(b) WAC 314-55-101	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine and destruction of affected marijuana	Tier 1: $7,500 Tier 2: $15,000 Tier 3: $22,500 monetary fine and destruction of affected marijuana	License cancellation	
Transportation of marijuana without a manifest. WAC 314-55-085(3) WAC 314-55-096 (1) and (2) WAC 314-55-105(2) WAC 314-55-310(3)	Retail/transporter: $1,250 monetary fine Producer/processor: Tier 1: $1,250 Tier 2: $2,500 Tier 3: $5,000 monetary fine	Retail/transporter: 5-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $10,000 monetary fine	License cancellation	
Obstruction: Misrepresentation of fact; not permitting physical presence. WAC 314-55-185	10-day suspension or $7,500 monetary option	30-day suspension	License cancellation	
Failure to use and maintain traceability, or both: Including, but not limited to, failure to maintain records for flowering plant, finished product, any post-harvest product, any plant not on approved floor-plan, or not tagged, reusing identifier. WAC 314-55-083(4)	$1,250 monetary fine	5-day suspension or $2,500 monetary fine	10-day suspension or $5,000 monetary fine	License cancellation
Pickup, unload, or delivery at an unauthorized location. WAC 314-55-085 (5)(f) WAC 314-55-310	Retail/transportation: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: $20,000 Tier 2: $40,000 Tier 3: $60,000 monetary fine	License cancellation	

NEW SECTION

WAC 314-55-522 Category III. Violations that create a potential threat to public health, safety, or both.

Category III
Violations That Create a Potential Threat to Public Health, Safety, or Both

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Driver transporting without a valid driver's license. WAC 314-55-310 (5)(a)	5-day suspension or $1,250 monetary option	10-day suspension	30-day suspension	License cancellation
Exceeding maximum serving requirements for marijuana-infused products. WAC 314-55-095 (1)(a) and (b) **Exceeding transaction limits.** WAC 314-55-095 (2)(c)	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	License cancellation
Failure to follow and maintain food processing facility requirements. RCW 69.50.342 (1)(a) and (c) WAC 314-55-077 (4)(b) WAC 246-70-070 (1) and (2)	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Failure to maintain required surveillance system. WAC 314-55-083(3)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option
Retail sales: Unauthorized marijuana-infused products. WAC 314-55-077 (9)(a) and (b)	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 option	30-day suspension
True party of interest: Allowing a person to exercise ownership or control who has not been disclosed to the board, and would have failed for any reason. WAC 314-55-035	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: $20,000 Tier 2: $40,000 Tier 3: $60,000 monetary fine

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Financier. Receiving money from a financier that was not disclosed to or approved by the board when the financier or the source of funds would not have qualified for any reason. WAC 314-55-035	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: $20,000 Tier 2: $40,000 Tier 3: $60,000 monetary fine
Obstruction: Failure to furnish records. WAC 314-55-185 (1)(c)	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	30-day suspension	60-day suspension
Failure to use traceability, maintain traceability, or both for quality assurance testing, including pesticide testing, potency testing, or both. WAC 314-55-083 (4)(k)	$1,250 monetary fine	$2,500 monetary fine	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option
Noncompliance with marijuana processor extraction requirements. WAC 314-55-104	$1,250 monetary fine	$2,500 monetary fine	$7,500 monetary fine	$15,000 monetary fine
Sales in excess of transaction limits. WAC 314-55-095 (2)(c)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option

NEW SECTION

WAC 314-55-523 Category IV. Violations that are significant regulatory violations.

Category IV
Significant Regulatory Violations

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Noncompliance with record keeping requirements. WAC 314-55-087	$500 monetary fine	5-day suspension or $1,250 monetary fine	10-day suspension or $2,500 monetary option	30-day suspension or $7,500 monetary option
Marijuana illegally given away, including being sold below the cost of acquisition, true value, or both. WAC 314-55-017(3) WAC 314-55-018 (2)(f) WAC 314-55-018(5) WAC 314-55-077 (11)(b)	$500 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Retail sales: Use of an unauthorized money transmitter. WAC 314-55-115(5)	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 monetary option	30-day suspension or $7,500 monetary option
Misuse or unauthorized use of marijuana license (operating outside of license class). RCW 69.50.325	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	30-day suspension or $10,000 monetary option	60-day suspension or $20,000 monetary option
Selling or purchasing marijuana on credit. WAC 314-55-018 WAC 314-55-115	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	30-day suspension or $10,000 monetary option	60-day suspension or $20,000 monetary option
Engaging in nonretail conditional sales, prohibited practices, or both. WAC 314-55-017(1) WAC 314-55-018	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option
Operating/floor plan: Violations of a WSLCB approved operating plan. WAC 314-55-020 (11)(a)	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 monetary option	30-day suspension or $7,500 monetary option
Failure to maintain required insurance. WAC 314-55-082 WAC 314-55-310	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $7,500 monetary option	30-day suspension or $15,000 monetary option
Unauthorized sale to a retail licensee (processor). RCW 69.50.360 RCW 69.50.363 WAC 314-55-077 WAC 314-55-083(4)	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $10,000 monetary fine	Tier 1: $7,500 Tier 2: $15,000 Tier 3: $30,000 monetary fine	Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine
Packaging and labeling. WAC 314-55-105	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 monetary option	30-day suspension or $7,500 monetary option
Unauthorized or unapproved product storage or delivery (processor/producer). WAC 314-55-085(5)	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Unauthorized or unapproved product storage or delivery (transporter). WAC 314-55-310 (5)(d)	$1,250 monetary fine	$2,500 monetary fine	$5,000 monetary fine	$10,000 monetary fine

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Failure to meet marijuana waste disposal requirements. WAC 314-55-097	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Sampling violations (processors/producers: Vendor, educational, and internal quality control samples). WAC 314-55-096	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Sampling violations (retail). WAC 314-55-096(5) WAC 314-55-096(6)	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Failure to maintain required security alarm. WAC 314-55-083(2)	$1,250 monetary fine	$2,500 monetary fine	$5,000 monetary fine	$10,000 monetary fine

NEW SECTION

WAC 314-55-524 Category V. Violations that are procedural and operational.

Category V
Procedural and Operation Violations

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Hours of service: Sales of marijuana between 8:00 a.m. and 12:00 a.m. WAC 314-55-147	$500 monetary fine	5-day suspension or $1,250 monetary fine	10-day suspension or $2,500 monetary option	30-day suspension
General advertising violations. RCW 69.50.369 WAC 314-55-155	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	30-day suspension or $10,000 monetary option
Engaging in conditional sales. WAC 314-55-017(2)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	30-day suspension or $10,000 monetary option
Licensee, employee, or both failing to display identification badge. WAC 314-55-083(1)	$250 monetary fine	5-day suspension or $500 monetary option	10-day suspension or $1,250 monetary option	30-day suspension or $2,500 monetary option
Failure to post required signs. WAC 314-55-086	$250 monetary fine	5-day suspension or $500 monetary option	10-day suspension or $1,250 monetary option	30-day suspension or $2,500 monetary option
Unauthorized change of business name. WAC 314-55-130	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 monetary option	30-day suspension or $5,000 monetary option

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Transporting marijuana in an unauthorized vehicle. WAC 314-55-085(5) WAC 314-55-310	$1,250 monetary fine	Retail/transporter: 5-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Retail/transporter: 10-day suspension Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Exceeding maximum delivery time frame. WAC 314-55-085 WAC 314-55-083 (4)(d)	$1,250 monetary fine	Retail/transporter: 5-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Retailer/Transporter: 10-day suspension Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Failure to maintain standardized scale requirements (producer/processor). WAC 314-55-099	$1,250 monetary fine	Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Unauthorized driver or passenger. WAC 314-55-310 (5)(a)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension	30-day suspension
Transportation of marijuana without an accurate manifest. WAC 314-55-085(3) WAC 314-55-310(3)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension	30-day suspension
Load exceeding maximum delivery amount. RCW 69.50.385(3) WAC 314-55-083 (4)(d) WAC 314-55-085(1)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	10-day suspension	30-day suspension
Retail sales: Accepting returns. WAC 314-55-079(12)	$500 monetary fine	5-day suspension or $1,250 monetary option	10-day suspension or $2,500 monetary option	30-day suspension
Failure to use traceability, maintain traceability, or both. (e.g., failure to comply with traceability requirements for clones, seeds; illegal or folded tags; movement within a location) WAC 314-55-083(4)	5-day suspension or $2,500 monetary option	10-day suspension or $5,000 monetary option	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: $20,000 Tier 2: $40,000 Tier 3: $60,000 monetary fine

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
True party of interest (TPI): Allowing a person not disclosed to the board who would have qualified to exercise ownership or control, or allowing a TPI previously approved by the board to provide funds without disclosure. WAC 314-55-035(XX)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	Retail/transporter: 10-day suspension or $5,000 monetary option Producer/Processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $20,000 monetary fine	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine
Financier. Receiving money from a financier previously approved by the board that was not timely disclosed to the board or that was timely disclosed to the board but the source could not be verified. WAC 314-55-035(XX)	$1,250 monetary fine	5-day suspension or $2,500 monetary option	Retail/transporter: 10-day suspension or $5,000 monetary option Producer/Processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $20,000 monetary fine	Retail/transporter: 30-day suspension Producer/processor: Tier 1: $10,000 Tier 2: $20,000 Tier 3: $30,000 monetary fine

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-525 ((~~Group 2 regulatory violations.~~)) Category VI. ((~~Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses. Group 2 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.~~

~~Violation Type~~	~~1st Violation~~	~~2nd Violation in a three-year window~~	~~3rd Violation in a three-year window~~	~~4th Violation in a three-year window~~
~~**Hours of service:** Sales of marijuana between 12:00 a.m. and 8:00 a.m. Chapter 314-55 WAC~~	~~5-day suspension or $1,000 monetary option~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~
~~**General advertising:** Violations Chapter 314-55 WAC~~	~~Retailer/transporter: 5-day suspension or $1,000 monetary option~~ ~~Producer/processor: $1,000 monetary fine~~	~~Retailer/transporter: 10-day suspension or $2,500 monetary option~~ ~~Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine~~	~~Retailer/transporter: 30-day suspension~~ ~~Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine~~	~~Cancellation of license~~
~~**Engaging in conditional retail sales.** Chapter 314-55 WAC Chapter 69.50 RCW~~	~~5-day suspension or $1,000 monetary option~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Licensee/employee failing to display required security badge. Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or $500 monetary option Producer/processor: $500 monetary fine	Retailer/transporter: 10-day suspension or $1,500 monetary option Producer/processor: All tiers: $1,500 monetary fine	Retailer/transporter: 30-day suspension Producer/processor: All tiers: $5,000 monetary fine	Cancellation of license
Failure to maintain required security alarm and surveillance systems. Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or $2,500 monetary option Producer/processor: $2,500 monetary fine	Retailer/transporter: 10-day suspension or $5,000 monetary fine Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Retailer/transporter: 30-day suspension Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine	Cancellation of license
Records: Improper recordkeeping. Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or $1,000 monetary option Producer/processor: $1,000 monetary fine	Retailer/transporter: 10-day suspension or $2,500 monetary option Producer/processor: Tier 1: $2,500 Tier 2: $5,000 Tier 3: $7,500 monetary fine	Retailer/transporter: 30-day suspension Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine	Cancellation of license
Failure to submit monthly tax payments. Chapter 69.50 RCW Chapter 314-55 WAC	Retailer: 5-day suspension or $1,000 monetary option	Retailer: 10-day suspension or $2,500 monetary option	Retailer: 30-day suspension	Cancellation of license
Signs: Failure to post required signs. Chapter 69.50 RCW Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or $500 monetary option Producer/processor: $500 monetary fine	Retailer/transporter: 10-day suspension or $1,500 monetary option Producer/processor: All tiers: $1,500 monetary fine	Retailer/transporter: 15-day suspension or $5,000 monetary option Producer/processor: All tiers: $5,000 monetary fine	Cancellation of license
Failure to utilize and/or maintain traceability. Chapter 314-55 WAC	5-day suspension or $2,500 monetary option Producer/processor: $2,500 monetary fine	Retailer: 10-day suspension or $5,000 monetary fine Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine	Cancellation of license

~~Violation Type~~	~~1st Violation~~	~~2nd Violation in a three-year window~~	~~3rd Violation in a three-year window~~	~~4th Violation in a three-year window~~
~~Violation of transportation requirements.~~ Chapter 314-55 WAC	~~Retailer: 5-day suspension or $2,500 monetary option~~ ~~Producer/processor: $2,500 monetary fine~~	~~Retailer: 10-day suspension or $5,000 monetary fine~~ ~~Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine~~	~~Retailer: 30-day suspension~~ ~~Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine~~	~~Cancellation of license~~
~~Marijuana sold below cost of acquisition, true value, or illegally given away.~~	~~Retailer: 5-day suspension or $1,000 monetary option~~ ~~Producer/processor: $2,500 monetary fine~~	~~Retailer: 10-day suspension or $5,000 monetary option~~ ~~Producer/processor: Tier 1: $5,000 Tier 2: $10,000 Tier 3: $15,000 monetary fine~~	~~Retailer: 30-day suspension~~ ~~Producer/processor: Tier 1: $15,000 Tier 2: $30,000 Tier 3: $60,000 monetary fine~~	~~Cancellation of license~~
~~Retail sales: Use of an unauthorized money transmitter.~~ Chapter 314-55 WAC	~~5-day suspension or $1,000 monetary option~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~
~~Retail outlet selling unauthorized products.~~ Chapter 69.50 RCW	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~
~~Retailer displaying products in a manner visible to the general public from a public right of way.~~ Chapter 69.50 RCW	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~	~~$1,000 monetary fine~~
~~Retail sales: Unauthorized marijuana infused products, internet sales, and accepting returns.~~ Chapter 314-55 WAC	~~5-day suspension or $1,000 monetary option~~	~~10-day suspension or $2,500 monetary option~~	~~30-day suspension~~	~~Cancellation of license~~))

Statutory penalty violations.

Category VI

Statutory Penalty Violations

Allowing a minor to frequent a retail store. RCW 69.50.357(2)	$1,000 monetary fine
Allowing persons under twenty-one years of age to frequent a retail licensed premises. RCW 69.50.357	$1,000 monetary fine
Employee under legal age. RCW 69.50.357(2)	$1,000 monetary fine
Opening or consuming marijuana on a licensed retail premises, or both. RCW 69.50.357(4)	$1,000 monetary fine
Retail outlet selling unauthorized products. RCW 69.50.357 (1)(a)	$1,000 monetary fine

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-540 ((~~Information about~~)) Marijuana license suspensions. (1) On the effective date of a marijuana

license suspension ((~~goes into effect~~)), a ((~~WSLCB~~)) board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the ((~~WSLCB due to~~)) board based on a violation of ((~~a WSLCB~~)) applicable law or rule.

(2) During the period of marijuana license suspension, the licensee and employees:

(a) Are required to ((~~maintain compliance~~)) comply with all applicable ((~~marijuana~~)) laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the ((~~WSLCB's~~)) board's suspension notice.

(3) During the period of marijuana license suspension a marijuana licensee:

(a) ((~~A marijuana licensee~~)) May not operate ((~~his/her~~)) their business.

(b) ((~~There is no sale, delivery, service, destruction, removal, or receipt of~~)) May not sell, deliver, service, destroy, remove, or receive marijuana.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-55-510	What options does a licensee have once he/she receives a notice of an administrative violation?
WAC 314-55-515	What are the penalties if a marijuana license holder violates a marijuana law or rule?
WAC 314-55-530	Group 3 license violations.
WAC 314-55-535	Group 4 marijuana producer and/or processor violations.
WAC 314-55-537	Group 5 license violations.

WSR 19-23-046
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed November 13, 2019, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-03-060.

Title of Rule and Other Identifying Information: WAC 314-05-020 Special occasion license, 314-05-025 Application process for a special occasion license, 314-05-030 Guidelines for special occasion license events, and 314-05-035 Advertising and branded promotional items for special occasion events.

The above sections were revised to clarify requirements for special occasion license applications, events, and advertising. Other changes include the removal of unnecessary and outdated language and additional technical and clarifying updates.

Hearing Location(s): On January 8, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98504.

Date of Intended Adoption: On or after January 22, 2019 [2020].

Submit Written Comments to: Janette Benham, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by January 8, 2020.

Assistance for Persons with Disabilities: Contact Claris Nnanabu, Americans with Disabilities Act coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nnanabu@lcb.wa.gov, by December 30, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions clarify requirements for special occasion licenses, including the application process, guidelines for special occasion events, and advertising requirements for special occasion events. Rule revisions will help ensure applicants and licensees operate under applicable statutory provisions and have clear guidelines in place.

Reasons Supporting Proposal: As part of the Washington state liquor and cannabis board (WSLCB) ongoing rules review process, revisions and updates were necessary to ensure applicants and licensees have clear and relevant guidelines in place regarding special occasion licenses and events. The rule revisions will also ensure applicants and licensees have clear rules in place and will help reduce the number of calls to WSLCB staff. Revisions also include additional technical and clarifying updates.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.010, 66.24.375, 66.24.380, 66.28.040, 66.28.070, 66.28.285, 66.28.290, 66.28.295, 66.28.300, 66.28.305, 66.28.310, 66.28.315, 66.28.320.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Janette Benham, Rules Coordinator, 1025 Union Avenue, Olympia, WA, 360-664-1760; Implementation: Becky Smith, Licensing Director, 1025 Union Avenue, Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 1025 Union Avenue, Olympia, WA, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5). Requirements outlined in the rules are explicitly and specifically dictated by statute. In

addition, the rules relate to process requirements for applying for a license.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 13, 2019
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

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 and wine by the bottle 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)) may have no more than twelve days of events per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for ((this)) the special occasion license is (($60)) sixty dollars per day, per event. ((Multiple)) Each additional alcohol service ((locations)) area at an event ((are)) is an additional sixty dollars per ((location)) day.

(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.

(6) If a winery is taking orders and accepting 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, the special occasion shall include the name of the winery on the special occasion license application.)) A special occasion license is a retail liquor license. Nonprofit organizations must comply with applicable retail liquor license requirements when operating under the special occasion license.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-05-025 Application process for a special occasion license. (1) Special occasion applications ((normally take)) must:

(a) Be submitted at least forty-five days ((to process. The liquor and cannabis board may not be able to process your application in time for your event if you do not apply at least forty-five days before the event.

(2))) prior to an event where no minors will attend; or

(b) Be submitted with an application addendum at least sixty days prior to an event where the applicant requests minors in attendance.

(2) Special occasion applications must include:

(a) Documentation verifying that the organization is a registered nonprofit;

(b) The name of any winery that will be taking orders at the event and accepting payment for wine of its own production to be delivered at a later date; and

(c) Any additional information requested by the board.

(3) Applications submitted less than the required forty-five or sixty days prior to the event may not be approved.

(4) Per RCW 66.24.010(8), ((when the liquor and cannabis board receives a special occasion application, it)) the board must send a notice to the local authority for each application received. The local authority has twenty days to respond ((with any input, and they may)) or request an extension for good cause.

(((3) The liquor and cannabis)) (5) The board may ((run)) conduct a criminal history check on the organization's officers and/or managers.

(((4) The liquor and cannabis board requires documentation to verify the organization is a bona fide nonprofit, who the true party(ies) of interest are in the organization, and that the organization meets the guidelines outlined in WAC 314-05-020 and 314-05-025.

(5) See chapter 314-07 WAC regarding possible reasons for denial of a special occasion license.)) (6) Special occasion licenses may be denied for reasons including, but not limited to, those outlined in chapter 314-07 WAC. Denials are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-05-030 Guidelines for special occasion license events. (1) The special occasion license must be posted at each alcohol service area at the event.

(2) ((Special occasion licensees may get alcohol for the event only from the following sources:

(a))) Per RCW 66.28.070, all spirits, beer, and wine ((must be purchased at retail from)) purchased for the event by the special occasion licensee may only be purchased in the manufacturer's approved container or package from the following:

(a) A licensed off-premises retailer; ((from a spirits, beer, or wine))

(b) A distributor; ((from a distiller, a craft distiller,))

(c) A distillery or craft distillery;

(d) A domestic brewery((,)) or microbrewery((, or)); (e) A winery ((acting as a distributor of its own product)); or ((from)) (f) A certificate of approval holder with a direct shipping to Washington retailer endorsement.

(3) Per RCW 66.28.310, special occasion licensees are allowed to pay for beer ((or)), wine, and spirits used for the special occasion event immediately following the end of the ((special occasion)) event((; and (b))).

(4) Per RCW 66.28.040, alcohol may be donated to special occasion licensees registered as 501 (c)(3) and 501 (c)(6) for the event as follows:

(a) In state breweries ((and wineries, out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer, wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations.

(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.

(4) Per RCW 66.28.310, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.

(a) Wineries and distilleries may pour at any special occasion event)) and beer certificate of approval holders may donate beer;

(b) In state wineries and wine certificate of approval holders may donate wine;

(c) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate spirits.

(5) Alcohol may not be provided, or advertised as being provided, free of charge at the special occasion event.

(6) Alcohol may not be sold, or advertised as being sold, below the manufacturer's cost at the special occasion event.

(7) If alcohol is auctioned at the event, the final sale price may not be below the manufacturer's cost.

(8) Tickets may be sold for the special occasion event.

(a) If the ticket fee includes alcohol for event attendees, the ticket must be sold directly by the nonprofit organization and may not be sold by a third party; and

(b) In order to ensure alcohol is not being given away or sold below the manufacturer's cost, if the ticket fee includes alcohol the total ticket fee must be above the manufacturer's cost of the included alcohol.

(9) Per RCW 66.24.375, no portion of the profits from special occasion events may be paid directly or indirectly to members, officers, directors, or trustees of the nonprofit organization except for services performed for the organization. Any compensation paid to officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state.

(((b))) (10) Wineries ((or)), breweries ((that are)), and distilleries participating in a special occasion event may pay ((reasonable)) booth fees to the special occasion licensee. Booth fees must be comparable to normally accepted industry standards and uniform for all participating wineries ((and)), breweries, and distilleries.

(((5))) (11) Breweries may provide installation of draft beer dispensing equipment for a special occasion event.

(12) Pouring or dispensing may be provided at any type of special occasion event by wineries, distilleries, or spirits distributors.

(13) Pouring or dispensing may be provided by breweries at a beer tasting exhibition or judging event. A beer tasting exhibition or judging event must be sponsored by the special occasion licensee and have at least three breweries represented that are pouring samples.

(14) Per RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated ((location(s))) area.

(((6))) (15) If a special occasion ((license function)) event is held at an establishment that has a liquor license:

(a) The special occasion ((function)) event must be ((held in an)) in a designated area of the licensed premises separate from areas open to the general public ((during the time the special occasion function is occurring, and));

(b) The licensed premises' liquor cannot be sold or served in ((the same area(s) as)) the designated special occasion ((license function.

(b))) event area;

(c) The liquor licensee cannot charge for the liquor purchased and brought by the special occasion licensee for service at the ((special occasion event, but can charge for room usage, services, etc.)) event but may charge for room usage, staff services, and additional service items used for the event;

(d) The liquor licensee must sign the special occasion application acknowledging that they will not sell or serve their liquor at the event and giving permission for the special occasion licensee to bring and sell their ((alcohol)) liquor at the liquor licensed premises((.

(c))); and

(e) The special occasion ((license will not be issued for use)) event cannot be held at a premises ((whose)) where the liquor license will be suspended by the board on the date(s) of the scheduled event.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-05-035 Advertising and branded promotional items for special occasion events. (1) ((Nothing in RCW 66.28.305 prohibits a licensed domestic brewery or microbrewery from providing branded promotional items which are of nominal value, singly or in the aggregate, to a nonprofit charitable corporation or association, exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the Internal Revenue Code as it existed on the effective date of this section for use consistent with the purpose entitling it to such exemptions. Branded promotional items may not be targeted to or be especially appealing to youth.

(2) If the nonprofit charitable corporation or association applies for and receives a special occasion license, they are considered a liquor retailer and are required to comply with

~~RCW 66.28.305.~~)) Manufacturers, distributors, or their licensed representatives may use web sites and social media to post, repost, or share promotional information or images about events per the requirements outlined in RCW 66.28.310.

(2) Special occasion licensees and industry members must comply with RCW 66.28.285 through 66.28.310, regarding the three-tier system, direct and indirect interests between industry members and retailers, undue influence, exclusive agreements, and money advances.

(3) Industry members may not provide money for advertising or promoting (sponsoring) an event directly to:

(a) The special occasion licensee;

(b) Employees of the special occasion licensee; or

(c) Promoters, event coordinators, or third parties hired by the special occasion licensee.

(4) If a third-party organization is holding an event in which a special occasion licensee participates, industry members may provide money for advertising or promoting (sponsoring) the event directly to the third-party organization only when:

(a) The third-party organization does not hold a special occasion license for the event; and

(b) The third-party organization has not been hired by the participating special occasion licensee.

(5) Industry members may also provide the following:

(a) Signage with the industry member's name or brand name of the product;

(b) Programs or flyers to be disseminated at the event;

(c) Media coverage of the event; and

(d) Branded promotional items as referenced in subsection (6) of this section.

(6) Signage that may be visible to the general public from the public right of way must not:

(a) Exceed a total of four signs affixed to or hanging in a window, or on the outside of the licensed event area, referring to alcoholic beverages, brand names, or manufacturers; and

(b) Exceed sixteen hundred square inches.

(7) Inflatables are not allowed inside the event area unless the area is completely enclosed with no view to the inside from the public right of way.

(8) Industry members may not give alcohol-related promotional items to event attendees in the special occasion licensed area.

(9) Special occasion licensees must comply with RCW 66.28.310 regarding receipt of branded promotional items. Branded promotional items:

(a) May be provided by an industry member to a special occasion licensee;

(b) Must be of nominal value, singly or in the aggregate;

(c) Must be used exclusively by the ((~~retailer~~)) special occasion licensee in a manner consistent with ((~~its~~)) the special occasion license;

(((~~b~~))) (d) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(((~~c~~))) (e) May be provided by industry members only to ((~~retailers~~)) special occasion licensees and their employees and may not be provided by or through ((~~retailers~~)) special occasion licensees or their employees to retail customers; and

(((~~d~~))) (f) May not be targeted to or be especially appealing to youth.

(((~~3~~))) (10) An industry member is not obligated to provide ((~~such~~)) branded promotional items as a condition for selling alcohol to the ((~~retailer~~)) special occasion licensee.

(((~~4~~))) (11) Any industry member or retailer or any other person asserting the provision of branded promotional items as allowed in this section has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria of this section, may file a complaint with the ((~~liquor and cannabis~~)) board. Upon receipt of a complaint, the ((~~liquor and cannabis~~)) board may conduct ((~~such~~)) an investigation ((~~as it deems appropriate~~)).

(a) The ((~~liquor and cannabis~~)) board may issue an administrative violation notice to the industry member, the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

WSR 19-23-069
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed November 18, 2019, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-050.

Title of Rule and Other Identifying Information: Repealing chapter 495A-131 WAC, Scholarships.

Hearing Location(s): On January 7, 2020, at 1:30 a.m. [p.m.] - 2:30 p.m., at the Downtown Campus Location, 1101 South Yakima Avenue, Clyde Hupp Room, Building A, Room A329, Tacoma, WA 98405-4895.

Date of Intended Adoption: January 30, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by December 27, 2019.

Assistance for Persons with Disabilities: Contact Ms. Karey Bryson, phone 253-680-7100, fax 253-680-7101, email kbryson@batestech.edu, by December 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repealing chapter 495A-131 WAC, Scholarships.

Reasons Supporting Proposal: See purpose above.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; and Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

November 18, 2019
Dr. Jean Hernandez
Special Assistant
to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495A-131-010 Scholarships.

WSR 19-23-070
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed November 18, 2019, 1:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-051.

Title of Rule and Other Identifying Information: Repealing chapter 495A-132 WAC, Financial aid.

Hearing Location(s): On January 7, 2020, at 2:30 a.m. [p.m.] - 3:30 p.m., at the Downtown Campus Location, 1101 South Yakima Avenue, Clyde Hupp Room, Building A, Room A329, Tacoma, WA 98405-4895.

Date of Intended Adoption: January 30, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by December 27, 2019.

Assistance for Persons with Disabilities: Contact Ms. Karey Bryson, phone 253-680-7100, fax 253-680-7101, email kbryson@batestech.edu, by December 27, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repealing chapter 495A-132 WAC, Financial aid.

Reasons Supporting Proposal: See purpose above.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

November 18, 2019
Dr. Jean Hernandez
Special Assistant
to the President

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 495A-132-010 Financial aid.

WSR 19-23-075
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed November 19, 2019, 8:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-017.

Title of Rule and Other Identifying Information: WAC 182-549-1100 Rural health clinics—Definitions, 182-549-

1200 Rural health clinics—Enrollment, 182-549-1300 Rural health clinics—Services, 182-549-1400 Rural health clinics—Reimbursement and limitations, 182-549-1450 Rural health clinics—General payment information, and 182-549-1500 Rural health clinics—Change in scope of service rate adjustment.

Hearing Location(s): On December 24, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at: https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 25, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 24, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by December 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this chapter to clarify the frequency of reconciliations, and to update timeliness standards criteria for enrollment of rural health clinics to include receipt of medicare certification letter. The agency is also amending this chapter to clarify that the agency covers dental services under 42 C.F.R. 491.2.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Linette Davis, P.O. Box 45518, Olympia, WA 98504-2716 [98504-5518], 360-725-1924.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Compliance with the proposed rule does not impose any cost on businesses.

November 19, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-10-058, filed 4/27/18, effective 5/28/18)

WAC 182-549-1100 Rural health clinics—Definitions. This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or chapter 182-500 WAC, the definitions found in the Webster's New World Dictionary apply.

"APM index" - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI).

"Base year" - The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

"Encounter" - A face-to-face visit between a client and a qualified ((~~rural health clinic (RHC)~~)) RHC provider (e.g., a physician, dentist, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

"Encounter rate" - A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

"Enhancements (also called managed care enhancements or supplemental payments)" - A monthly amount paid ((~~for each client enrolled with a managed care organization (MCO). MCOs may contract with RHCs to provide services under managed care programs. RHCs receive enhancements from the medicaid agency in addition to the negotiated payments they receive from the MCOs for services provided to enrollees~~)) by the agency to RHCs through a managed care organization (MCO) that has contracted with the RHC to provide services to clients enrolled with the MCO. The enhancement is in addition to the negotiated payment that RHCs receive from the MCO. RHCs participating in the payment method described in WAC 182-549-1450 (5)(b) do not receive enhancements.

"Fee-for-service" - A payment method the agency uses to pay providers for covered medical services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program, except those services provided under the agency's prepaid managed care organizations or those services that qualify for an encounter payment.

"Interim rate" - The rate established by the agency to pay a rural health clinic for covered RHC services prior to the establishment of a permanent rate for that facility.

"Medicare cost report" - The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

"Mobile unit" - The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

"Permanent unit" - The objects, equipment, and supplies necessary for the provision of the services furnished directly by the RHC are housed in a permanent structure.

"Rebasing" - The process of recalculating encounter rates using actual cost report data.

"Rural area" - An area that is not delineated as an urbanized area by the U.S. Census Bureau.

"Rural health clinic (RHC)" - A clinic, as defined in 42 C.F.R. 405.2401(b), that is primarily engaged in providing RHC services and is:

• Located in a rural area designated as a shortage area as defined under 42 C.F.R. 491.2;

• Certified by medicare as an RHC in accordance with applicable federal requirements; and

• Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

"Rural health clinic (RHC) services" - Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 C.F.R. Part 491.9.

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-549-1200 Rural health clinics—Enrollment. (1) To participate in the Title XIX (medicaid) program or the Title XXI (CHIP) program and receive payment for services, a rural health clinic (RHC) must:

(a) Receive RHC certification for participation in the Title XVIII (medicare) program according to 42 C.F.R. 491;

(b) Sign a core provider agreement with the medicaid agency;

(c) Comply with the clinical laboratory improvement amendments (CLIA) of 1988 testing for all laboratory sites per 42 C.F.R. Part 493; and

(d) Operate in accordance with applicable federal, state, and local laws.

(2) An RHC may be a permanent or mobile unit. If an entity owns clinics in multiple locations, each individual site must be certified by the ((~~medicaid~~)) agency in order to receive reimbursement from the agency as an RHC.

(3) The agency uses one of two timeliness standards for determining the effective date of a medicaid-certified RHC.

(a) The agency uses medicare's effective date if the RHC returns a properly completed core provider agreement and RHC enrollment packet within sixty days from the date of medicare's letter notifying the clinic of the medicare certification.

(b) The agency uses the date the ((~~signed core provider agreement is received~~)) medicare certification letter is received by the agency if the RHC returns the properly completed core provider agreement and RHC enrollment packet after sixty days of the date of medicare's letter notifying the clinic of the medicare certification.

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-549-1300 Rural health clinics—Services. (1) Rural health clinic (RHC) services are defined under 42 C.F.R. 440.20(b).

(2) The medicaid agency pays for RHC services when they are:

(a) Within the scope of a client's benefit package. ((~~Refer to~~)) See WAC 182-501-0060; and

(b) Medically necessary as defined in WAC 182-500-0070.

(3) RHC services may be provided by any of the following individuals in accordance with 42 C.F.R. 405.2401, 491.7, and 491.8:

(a) Physicians;

(b) Physician assistants (PA);

(c) Nurse practitioners (NP);

(d) Nurse midwives or other specialized nurse practitioners;

(e) Certified nurse midwives;

(f) Registered nurses (RN) or licensed practical nurses (LPN); ((~~and~~))

(g) Psychologists or clinical social workers; and

(h) Dental services specified in 42 C.F.R. Sec. 440.100.

AMENDATORY SECTION (Amending WSR 17-12-016, filed 5/30/17, effective 7/1/17)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ((~~will be~~)) are at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an ((~~RHC's~~)) RHC submits its first audited medicare cost report ((~~is available~~)) to the agency, the agency pays the RHC an average encounter rate of other similar RHCs (((~~whether the RHC is classified as hospital based or free-standing~~))) within the state, otherwise known as an interim rate. Similar RHCs are defined as either all hospital based or all free-standing RHCs;

(b) Upon ((~~availability~~)) submission of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available to the agency. The agency then increases the encounter rate ((~~is then increased~~)) each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of

services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency ((~~calculates~~)) calculated RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM ((~~utilizes~~)) used the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates ((~~are~~)) were increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result ((~~is~~)) was the year 2009 APM rates for each RHC that ((~~chooses~~)) chose to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency ((~~pays~~)) paid RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC ((~~has~~)) had the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM ((~~uses~~)) used each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency ((~~will recoup~~)) recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process ((~~is~~)) was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates ((~~will be~~)) are increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency ((~~will recoup~~)) recouped from RHCs any amount paid in excess of the encounter rate established in this section. This process ((~~is~~)) was specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency ((~~will~~)) periodically rebases the encounter rates using the RHC cost reports and other relevant data. Rebasing ((~~will be~~)) is done only for RHCs that are reimbursed under the APM.

(e) The agency ((~~will ensure~~)) makes sure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided beginning July 1, 2017.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC.

(iv) The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

((~~(iv)~~)) (v) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(((~~(iii)~~))) (iv) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(((~~(iii)~~))) (iv) of this subsection.

AMENDATORY SECTION (Amending WSR 17-22-070, filed 10/27/17, effective 1/1/18)

WAC 182-549-1450 Rural health clinics—General payment information. (1) The medicaid agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) Rural health clinic (RHC) services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) The agency pays for non-RHC services provided in an RHC on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(4) For clients enrolled with a managed care organization (MCO), that MCO pays for covered RHC services ((~~are paid for by the MCO~~)).

(5) For clients enrolled with MCOs, the RHC receives an encounter rate using either the method described in (a) or (b) of this subsection.

(a) ((~~The agency makes supplemental payments, called enhancements, to the MCOs who distribute them to the RHCs. These payments are in addition to the amounts paid to the RHC by the MCO as described in subsection (4) of this section.~~)) RHCs receive an enhancement payment in addition to the MCO's negotiated payment. The ((~~supplemental~~)) agency makes enhancement payments ((~~are paid~~)) in amounts necessary to ((~~ensure~~)) make sure that the RHC receives the full encounter rate to comply with 42 U.S.C. 1396a (bb)(5)(A).

(i) The RHCs receive a monthly enhancement payment for each managed care client assigned to them by an MCO.

(ii) To ((~~ensure~~)) make sure that each RHC receives the appropriate amounts ((~~are paid to each RHC~~)), the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency ((~~will~~)) compares the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less the fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency ((~~will~~)) recoups the appropriate amount. If the RHC has been underpaid, the agency ((~~will~~)) pays the difference. For dates of service on and after January 1, 2018, reconciliations ((~~will be~~)) are conducted in the calendar year following the calendar year for which the enhancements were paid. Reconciliations ((~~will be~~)) are conducted by the agency or the clinic with final review and approval by the agency. The process of settling over or under payments may extend beyond the calendar year in which the reconciliations were conducted.

(b) Effective January 1, 2018, instead of distributing monthly enhancement payments to the RHCs, MCOs ((~~will~~)) pay the full encounter rate directly to participating clinics for encounter-eligible services.

(i) RHC participation in this option is voluntary. The RHC must notify the agency in writing whether it will participate or not by no later than November 1st prior to the year of participation.

(ii) The agency performs ((~~an annual~~)) a reconciliation with the MCO as outlined in the MCO contract. Reconciliations ((~~ensure~~)) make sure appropriate amounts are paid to each RHC and that MCOs are not put at risk for, or have any right to, the enhancement portion of the claim. If an MCO has been overpaid, the agency ((~~will~~)) recoups the appropriate amount. If an MCO has been underpaid, the agency ((~~will~~)) pays the difference.

(iii) RHCs participating in the revised alternative payment method (APM) as described in WAC 182-549-1400(8) ((~~will~~)) are not ((~~be~~)) eligible to receive encounter payments directly from MCOs under this section.

(6) Only those services provided to clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for services provided to clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

AMENDATORY SECTION (Amending WSR 15-05-020, filed 2/9/15, effective 3/12/15)

WAC 182-549-1500 Rural health clinics—Change in scope of service rate adjustment. In accordance with 42 U.S.C. 1396a (bb)(3)(B), the agency ((~~will~~)) adjusts its payment rate to a rural health clinic (RHC) to take into account any increase or decrease in the scope of the RHC's services. The procedures and requirements for any such rate adjustment are described below.

(1) **Triggering events.**

(a) An RHC may file a change in scope of services rate adjustment application on its own initiative only when:

(i) The cost to the RHC of providing covered health care services to eligible clients has increased due to one or more of the following:

(A) A change in the type of health care services the RHC provides;

(B) A change in the intensity of health care services the RHC provides. Intensity means the total quantity of labor and materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the RHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the RHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased; and

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter; and

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under state and federal law.

(b) At any time, the agency may instruct the RHC to file a cost report with a statement of whether the RHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services (the RHC "position statement").

(i) The RHC must file a completed cost report and position statement no later than ninety calendar days after receiving the instruction from the agency to file an application;

(ii) The agency reviews the RHC's cost report and position statement ((~~will be reviewed~~)) under the same criteria listed above for an application for a change in scope adjustment;

(iii) The agency ((~~will~~)) does not request more than one change in scope in a calendar year.

(2) **Filing requirements.**

(a) The RHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

(i) Unless instructed to file an application by the agency, the RHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

(ii) The RHC must file for a change in scope of service rate adjustment no later than ninety days after the end of the calendar year in which the RHC believes the change in scope occurred or in which the RHC learned that the cost threshold in subsection (1)(a)(ii) of this section was met, whichever is later.

(b) Prospective change in scope.

(i) To file a prospective change in scope of service rate adjustment application, the RHC must submit projected costs sufficient to establish an interim rate. A prospective change is a change the RHC plans to implement in the future. The interim rate adjustment ((~~will go~~)) goes into effect after the change takes effect.

(ii) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

(iii) If the change in scope occurs fewer than ninety days after the RHC submitted a complete application to the agency, the interim rate must take effect no later than ninety days after the complete application was submitted to the agency.

(iv) If the change in scope occurs more than ninety days but fewer than one hundred eighty days after the RHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

(v) If the RHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within one hundred eighty days, the application is void and the RHC may resubmit the application to the agency, in which case, (a)(i) of this subsection does not apply.

(c) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application must state each qualifying event listed in subsection (1)(a)(i) of this section that supports its application and include twelve months of data documenting the cost change caused by the qualifying event. A retrospective change in scope is a change that took place in the past and the RHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the RHC filed the complete application with the agency.

(3) **Supporting documentation.**

(a) To apply for a change in scope of service rate adjustment, the RHC must include the following documentation in the application:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The RHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include a projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the twelve-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve months or the fiscal year following implementation of the proposed change in scope.

(4) **Review of the application.**

(a) Application processing.

(i) The agency ((~~must~~)) reviews the application for completeness, accuracy, and compliance with program rules.

(ii) Within sixty days of receiving the application, the agency ((~~must notify~~)) notifies the RHC of any deficient documentation or requests any additional information that is necessary to process the application.

(iii) Within ninety days of receiving a complete application, the agency ((~~must~~)) sends the RHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement.

(iv) Failure to act within ninety days ((~~will~~)) means that the change is considered denied by the agency and the RHC

may appeal the decision as provided for in subsection (6) of this section.

(b) Determining rate for change in scope.

(i) The agency ((~~must~~)) sets an interim rate for prospective changes in scope by adjusting the RHC's existing rate by the projected average cost per encounter of any approved change. The agency ((~~will~~)) reviews the costs to determine if they are reasonable, and sets a new interim rate based on the determined cost per encounter.

(ii) The agency ((~~must~~)) sets an adjusted encounter rate for retrospective changes in scope by adjusting the RHC's existing rate by the documented average cost per encounter of the approved change. Projected costs per encounter may be used if there are insufficient historical data to establish the rate. The agency ((~~will~~)) reviews the costs to determine whether they are reasonable, and sets a new rate based on the determined cost per encounter.

(c) If the RHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment ((~~requested~~)) approved by the ((~~RHC will modify~~)) agency modifies the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final authority for making decisions related to changes in scope.

(5) **Post change in scope of services rate adjustment review.**

(a) If the change in scope application was based on a year or more of actual encounter data, the agency may conduct a post change in scope rate adjustment review.

(b) If the change in scope application was based on less than a full year of actual encounter data, the RHC must submit the following information to the agency within eighteen months of the effective date of the rate adjustment:

(i) Medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve consecutive months of experience following implementation of the change in scope; and

(ii) Any additional documentation requested by the agency.

(c) The agency ((~~will~~)) conducts the post change in scope review within ninety days of receiving the cost report and encounter data from the RHC.

(d) If necessary, the agency ((~~will~~)) adjusts the encounter rate within ninety days to ((~~ensure~~)) make sure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review ((~~will~~)) takes effect on the date the agency issues its adjustment. The new rate ((~~will be~~)) is prospective.

(f) If the RHC fails to submit the post change in scope cost report or related encounter data, the agency ((~~must~~)) provides written notice to the clinic of the deficiency within thirty days.

(g) If the RHC fails to submit required documentation within five months of this deficiency notice, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. The agency may recoup any overpayment to the RHC ((~~may be recouped by the agency~~)).

(6) **Appeals.** Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.

WSR 19-23-084
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 19-03—Filed November 19, 2019, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-04-091.

Title of Rule and Other Identifying Information: Chapter 173-501 WAC, Instream resources protection program—Nooksack water resource inventory area (WRIA) 1. We are amending the WRIA 1 rule to meet the requirements in RCW 90.94.020. We are proposing to amend the rule to (1) add flexibility for projects that retime high flows; (2) establish domestic permit-exempt groundwater withdrawal limits for new users; and (3) make technical updates.

We have developed draft documentation to support rule making. The supporting documentation for the rule includes: The estimated consumptive use of new domestic permit-exempt wells in the WRIA for the next twenty years, projects and actions to offset potential impacts to instream flows associated with the permit-exempt domestic water use, and an evaluation for net ecological benefit to meet the requirements of the law.

For more information on this rule making visit https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-501.

Hearing Location(s): On January 7, 2020, at 6:00 p.m., at Fairhaven Middle School, Commons Area, 110 Parkridge Road, Bellingham, WA 98225, presentation, question and answer session followed by the hearing; on January 8, 2020, at 3:00 p.m., at Lynden Middle School, Commons Area, 8750 Line Road, Lynden, WA 98264, presentation, question and answer session followed by the hearing; and on January 9, 2020, at 10:00 a.m., at the Department of Ecology, Padilla Bay Reserve, 10441 Bayview Edison Road, Mt. Vernon, WA 98273, presentation, question and answer session followed by the hearing.

Date of Intended Adoption: May 4, 2020.

Submit Written Comments to: Annie Sawabini, via U.S. mail at Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600; or via parcel delivery services to Department of Ecology, Water Resources Program, 300 Desmond Drive S.E., Lacey, WA 98503.

Submit comments by mail, online, or at the hearing(s); online http://oth.ecology.commentinput.com/?id=fdG6m, by January 17, 2020, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact ecology Americans with Disabilities Act coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email ecyADAcoordinator@ecy.wa.gov, by December 30, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 90.94.020 established requirements for a WRIA 1 watershed management plan update to be adopted by ecology by February 1, 2019. The statute directs ecology to begin rule making to meet the requirements of RCW 90.94.020 if a locally approved watershed plan update is not adopted by ecology by the deadline. A plan update was not submitted to ecology for review and adoption, so ecology is working on the required rule making.

We are using the rule-making process and supporting analysis to meet the requirements of the law to:

(1) Estimate twenty years of projected consumptive water use of new permit-exempt domestic withdrawals in WRIA 1;

(2) Develop a set of projects and actions that will offset the estimated consumptive water use and result in a net ecological benefit in the WRIA; and

(3) Amend and add regulations necessary for implementing these projects and actions.

Reasons Supporting Proposal: See purpose of the proposal above.

Statutory Authority for Adoption: Chapter 90.94 RCW, Streamflow restoration; chapter 90.22 RCW, Minimum water flows and levels; chapter 90.54 RCW, Water Resources Act of 1971; chapter 90.03 RCW, Water code; chapter 90.44 RCW, Regulation of public groundwaters; chapter 43.27A RCW, Water resources; chapter 43.21B RCW, Environmental and land use hearings office—Pollution control hearings board; RCW 43.21A.080 Department of ecology; chapter 18.104 RCW, Water well construction.

Statute Being Implemented: Chapter 90.94 RCW, Streamflow restoration; chapter 90.22 RCW, Minimum water flows and levels; chapter 90.54 RCW, Water Resources Act of 1971; chapter 90.03 RCW, Water code; chapter 90.44 RCW, Regulation of public groundwaters; chapter 43.27A RCW, Water resources; chapter 43.21B RCW, Environmental and land use hearings office—Pollution control hearings board; RCW 43.21A.080 Department of ecology; chapter 18.104 RCW, Water well construction.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Annie Sawabini, Kasey Cykler, Lacey, Bellingham, 360-407-6878, 360-255-4386; Implementation: Kasey Cykler, Bellingham, 360-255-4386; and Enforcement: Ria Berns, Bellevue, 425-649-7270.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Annie Sawabini, Department of Ecology, Water Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6878, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email annie.sawabini@ecy.wa.gov.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: While we identified potential costs of reduced property values as a result of the proposed amendments, we did not identify any costs that covered residential permit-exempt water users or project proponents would incur in order to comply with the rule. See the regulatory analyses for more information. In past rule makings related to water resources, for example, compliance costs included the costs of metering and reporting. The proposed amendments would only add the conservation standard and project allowance, but would not require any monitoring, reporting, or other additional compliance behavior. We are therefore not required to perform analyses under the Regulatory Fairness Act, per RCW 19.85.030.

November 19, 2019
Polly Zehm
Deputy Director

NEW SECTION

WAC 173-501-065 Permit-exempt groundwater for future domestic uses. (1) For the purposes of this section:

(a) "New permit-exempt domestic wells" are wells for groundwater withdrawals exempt from permitting under RCW 90.44.050 for the purposes of indoor domestic water use and outdoor domestic water use.

(b) "Indoor domestic water use" means potable water to satisfy the domestic needs of a household, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental uses.

(c) "Outdoor domestic water use" means water used for noncommercial lawns and gardens.

(d) "Subsistence gardening" means food cultivation for personal use by residents of the home.

(2) The requirements and limits in this section apply to new permit-exempt domestic wells constructed after the effective date of this rule amendment.

(3) Consistent with the provisions of RCW 90.94.020(5), a city or county issuing a building permit under RCW 19.27.097 (1)(c), or approving a subdivision under chapter 58.17 RCW, in this WRIA must:

(a) Record the limitations as described in subsection (5) of this section with the property title;

(b) Collect the applicable fee, as described in subsection (4) of this section;

(c) Record the number of building permits issued under chapter 19.27 RCW or subdivision approvals issued under chapter 58.17 RCW subject to the provisions of this section;

(d) Annually transmit to the department three hundred fifty dollars of each fee collected under this subsection; and

(e) Annually transmit an accounting of building permits and subdivision approvals subject to the provisions of this section to the department.

(4) Consistent with the provisions of RCW 90.94.020(5), an applicant for a building permit shall pay a fee of five hundred dollars to the permitting authority.

(5) The department establishes a conservation standard for withdrawals from new permit-exempt domestic wells as follows:

(a) Withdrawals from a new permit-exempt domestic well(s) serving a single connection are limited as follows:

(i) Indoor domestic water use shall not exceed five hundred gallons per day; and

(ii) Outdoor domestic water use shall be limited to an area not to exceed a total of one-twelfth acre, or three thousand six hundred thirty square feet. Outdoor domestic water use is in addition to indoor domestic water use set forth in (a)(i) of this subsection.

(b) Withdrawals from a new permit-exempt domestic well(s) serving a group domestic system that qualifies for the group domestic permit exemption under RCW 90.44.050 are limited as follows:

(i) Indoor domestic water use shall not exceed five hundred gallons per day for each connection, and shall not exceed a total of three thousand gallons per day for the entire group; and

(ii) Outdoor domestic water use shall be limited to an area not to exceed a total of one-twelfth acre, or three thousand six hundred thirty square feet, for each connection, and shall be limited to an area not to exceed a total of one-half acre for the entire group. Outdoor domestic water use is in addition to indoor domestic water use set forth in (b)(i) of this subsection.

(c) Upon the issuance of a drought emergency order under RCW 43.83B.405, withdrawals from new permit-exempt domestic wells may be curtailed by the department, except indoor domestic water use and withdrawals to maintain up to one-twelfth acre for each connection for noncommercial subsistence gardening purposes.

(d) The withdrawal limits defined in this subsection supersede the maximum annual average withdrawal limits specified in RCW 90.94.020.

(e) The department reserves the right to require metering and reporting of water use for domestic users as provided for under existing authorities. This includes, but is not limited to, RCW 90.44.050 and 90.44.250, and the provisions in chapter 173-173 WAC.

(f) Under all circumstances, the water use limits specified under RCW 90.44.050 shall not be exceeded.

AMENDATORY SECTION (Amending WSR 85-24-073, filed 12/4/85)

WAC 173-501-070 Exemptions. (1) Nothing in this chapter shall affect existing water rights, perfected riparian rights, federal Indian and non-Indian reserved rights, appropriative or otherwise existing on the effective date of this chapter, nor shall it affect existing rights relating to the operation of any navigation, hydroelectric, or water storage reservoir or related facilities.

(2) Single domestic surface water use, (including up to ((~~1/2~~)) one-half acre lawn and garden irrigation and associated noncommercial stockwatering) shall be exempt from the provisions established in this chapter, except that Whatcom Creek is closed to any further appropriation, including otherwise exempted single domestic use. For all other streams, when the cumulative impact of single domestic diversions begins to significantly affect the quantity of water available for instream uses, then any water rights issued after that time shall be issued for in-house use only, if no alternative source is available.

(3) Nonconsumptive uses which are compatible with the intent of this chapter may be approved.

(4) New interruptible uses may be approved from streams regulated under WAC 173-501-040 if the department determines through the water right appropriation procedure under chapter 90.03 RCW that the proposed use is consistent with:

(a) The intent of chapter 90.94 RCW to offset potential impacts to instream flows associated with permit-exempt domestic water use; or

(b) Applicable laws and restores and enhances streamflows.

WSR 19-23-089
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 19, 2019, 3:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-092.

Title of Rule and Other Identifying Information: WAC 308-108-155, driver training school (DTS), required curriculum and proper diligence.

Hearing Location(s): On January 8, 2019 [2020], at 11:00 a.m., at the highway[s] licensing building. Members of the public will need to sign in at the front desk.

Date of Intended Adoption: April 1, 2020.

Submit Written Comments to: Cara Jockumsen, P.O. Box 9030, Olympia, WA 98501, email cjockumsen@dol.wa.gov, fax 360-570-4976, by January 10, 2020.

Assistance for Persons with Disabilities: Contact Cara Jockumsen, phone 360-902-4008, fax 360-570-4976, TTY 711 or person's name, email cjockumsen@dol.wa.gov, by January 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule provides a framework for ensuring DTS are teaching the required curriculum as mandated by RCW 46.82.420.

Reasons Supporting Proposal: Ensure compliance with teaching the required curriculum RCW 46.82.420.

Statutory Authority for Adoption: RCW 46.82.420.

Statute Being Implemented: RCW 46.82.420.

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

Name of Proponent: Department of Licensing (DOL), governmental.

Name of Agency Personnel Responsible for Drafting: Loni Miller, 1125 Washington, Olympia, WA 98501, 902-360-3703 [360-902-3703]; Implementation: Cara Jockumsen, 1125 Washington, Olympia, WA 98501, 902-360-3703 [360-902-3703]; and Enforcement: Lou Blanchard, 1125 Washington, Olympia, WA 98501, 902-360-3703 [360-902-3703].

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal is being filed on behalf of DOL which is exempt from this statute.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. In order to fulfill the department's role pursuant to RCW 46.82.420(3), DOL, with agreement from the office of superintendent of public instruction (OSPI), held a series of stakeholder meetings to solicit input on the rule writing related to auditing DTS. These meetings led to workshops where DTS owners, DTS instructors, the traffic safety commission, OSPI, and DOL collaborated on drafting proposed rule language and a cross-reference form that will aid impacted businesses in communicating their compliance with the required curriculum. As the proposed language states, DTS and/or instructors will be required to complete and submit a form to DOL, and update the form when changes are made that effect the accuracy of the form. The department surveyed impacted DTS to determine estimated costs of complying with the proposed rule. Comparing these reported costs to estimated annual revenue of the industry, and asking the schools if they felt the cost of complying would cause them to incur more-than-minor costs, the department determined that the minor cost threshold was not met. A copy of the small business economic impact statement is available on the department's website and by request.

A copy of the detailed cost calculations may be obtained by contacting Ellis Starrett, 1125 Washington Street S.E., phone 360-902-3846, email estarrett@dol.wa.gov.

November 19, 2019
Ellis Starrett
Rules and Policy
Manage [Manager]

NEW SECTION

WAC 308-108-155 Required curriculum. (1) The required curriculum referred to in RCW 46.82.420 includes competencies to develop knowledge, skills, and awareness related to novice drivers. Training must include, but is not limited to, instruction on the following concepts outlined in the required curriculum:

(a) Rules of the road;
(b) Vehicle components;
(c) Vehicle handling;
(d) Driver behavior;
(e) Sharing the road;
(f) Attention and perception;
(g) Hazard and risk management;
(h) Vehicle maintenance/malfunctions and technology;
(i) Managing emergencies and adverse conditions;
(j) Respect and responsibility; and
(k) Vehicle technology systems.

(2) Driver training schools will cross-reference the required curriculum and the school's curriculum guide (WAC 308-108-170) on a form provided by and submitted to the department. When changes are made that affect the cross-reference form, the school must update the cross-reference form and submit it to the department.

WSR 19-23-092
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 20, 2019, 8:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-104.

Title of Rule and Other Identifying Information: WAC 392-140-970 through 392-140-976, Finance—Special allocations—Salary bonus for teachers and other certificated staff who hold current certification by the national board.

Hearing Location(s): On January 7, 2020, at 11:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 Washington Street S.E., Wanamaker Meeting Room, Olympia, WA 98501. Those planning to comment during the hearing should arrive in the meeting room by 11:00 a.m.

Date of Intended Adoption: January 10, 2020.

Submit Written Comments to: Ross Bunda, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email ross.bunda@k12.wa.us, fax 360-664-3683, by January 7, 2020.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by December 31, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to revise rules regarding the administration of the salary bonus for teachers and other certificated instructional staff who hold current certification by the National Board for Professional Teaching Standards. The proposed revisions (1) include as staff eligible for the bonus those who are assigned to the new (2019) educational staff associate duty category of behavior analyst, (2) officially include as staff eligible for the bonus those who are employed by tribal compact schools, (3) remove the word "challenging" from the phrase "challenging, high poverty school," and (4) update and clarify language throughout WAC sections.

Reasons Supporting Proposal: The proposed rule making will update and clarify provisions regarding administration of the national board salary bonus.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.405.415.

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

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, 360-725-6308; Implementation and Enforcement: T. J. Kelly, OSPI, 360-725-6301.

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

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

November 20, 2019
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

WAC 392-140-970 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Applicable provisions—Authority. The provisions of WAC 392-140-970 through ((~~392-140-975~~)) 392-140-976 govern administration of the salary bonus for teachers and other certificated instructional staff who hold current certification by the national board for professional teaching standards. The authority for WAC 392-140-970 through ((~~392-140-975~~)) 392-140-976 is the state Biennial Operating Appropriations Act, RCW 28A.405.415, and 28A.150.290(1).

AMENDATORY SECTION (Amending WSR 16-14-108, filed 7/6/16, effective 8/6/16)

WAC 392-140-972 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Definitions. As used in this chapter, "teachers and other certificated instructional staff" that are eligible for the national board bonus includes staff assigned to one of the following duties as defined in the *S-275 Personnel Reporting Handbook*:

(1) Elementary homeroom teacher, duty root 31;
(2) Secondary teacher, duty root 32;
(3) Other teacher, duty root 33;
(4) Elementary specialist teacher, duty root 34;
(5) Other support personnel, duty root 40;
(6) Library media specialist, duty root 41;
(7) Counselor, duty root 42;
(8) Occupational therapist, duty root 43;
(9) Social worker, duty root 44;
(10) Speech-language pathologist or audiologist, duty root 45;
(11) Psychologist, duty root 46;
(12) Nurse, duty root 47;
(13) Physical therapist, duty root 48;
(14) ((~~Reading resource specialist~~)) Behavior analyst, duty root 49;
(15) Long-term substitute teacher, duty root 52;
(16) Contractor teacher, duty root 63;
(17) Contractor educational staff associate, duty root 64; and excludes staff not assigned to the above duties. This excludes staff whose duties consist entirely of the following:
(18) Superintendent, duty root 11;
(19) Deputy/assistant superintendent, duty root 12;
(20) Other district administrator, duty root 13;
(21) Elementary principal, duty root 21;
(22) Elementary principal, duty root 22;
(23) Secondary principal, duty root 23;
(24) Secondary vice principal, duty root 24;
(25) Other school administrator, duty root 25;
(26) Extracurricular, duty root 51;
(27) Certificated on leave, duty root 61; or
(28) Classified staff, duty roots 90 through 99.

AMENDATORY SECTION (Amending WSR 19-02-067, filed 12/28/18, effective 1/28/19)

WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility. Staff that are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210;

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a);

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; ((~~or~~))

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school; or

(e) Teachers and other certificated instructional staff employed full time or part time by a tribal compact school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in ((~~challenging,~~)) high poverty schools, subject to the following conditions and limitations:

(a) ((~~Challenging,~~)) High poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) ((~~70~~)) Seventy percent for elementary schools;

(ii) ((~~60~~)) Sixty percent for middle schools; or

(iii) ((~~50~~)) Fifty percent for high schools; as determined by the October 1st count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on March 31st of that prior year: Provided, That schools operating during the current school year as their first year may qualify as ((~~challenging,~~)) high poverty schools based upon current year data, as determined by the October 1st count on March 31st of the current year.

(b) For purposes of the national board ((~~challenging,~~)) high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as ((~~challenging,~~)) high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the ((~~challenging,~~)) high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the ((~~challenging,~~)) high poverty schools bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to ((~~challenging,~~)) high poverty schools shall be determined as of the last day of school, or June ((~~15th~~)) 30th of the school year, whichever occurs first.

(ii) If the employee's assignment to ((~~challenging,~~)) high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

(g) A school participating in the community eligibility provision or provision 2 as authorized by section 11 (a)(1) of the Richard B. Russell National School Lunch Act may be designated as a ((~~challenging,~~)) high poverty school if the school was a ((~~challenging,~~)) high poverty school based on the student headcount enrollment eligible for the federal free or reduced price lunch program in either of the two school years immediately prior to the school's participation in the community eligibility provision.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-974 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Administrative procedures. (1) ((~~School~~)) Districts ((~~and~~)), charter schools, and tribal compact schools that employ teachers and other certificated instructional staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting for each employee the required data as determined by the superintendent of public instruction.

(2) Districts ((~~and~~)), charter schools, and tribal compact schools shall document each employee's eligibility by maintaining on file for audit a copy of the employee's national board certification notice and evidence of employment and duties assigned. For employees eligible for the ((~~challenging,~~)) high poverty schools bonus pursuant to WAC 392-140-973(3), districts ((~~and~~)), charter schools, and tribal compact schools shall also document the employee's instructional assignments in ((~~challenging,~~)) high poverty schools.

(3) All requests for the bonus must be submitted to the superintendent of public instruction by ((~~June 15th~~)) July 1st of the school year and shall be paid in the July apportionment and displayed on Report 1197, in revenue account 4158.

(4) Bonuses shall be reduced by a factor of 40 percent for first year National Board for Professional Teaching Standards (NBPTS) certified teachers, to reflect the portion of the instructional school year they are certified.

(((~~(4)~~))) (5) For each candidate, the superintendent of public instruction shall send the district ((~~or~~)), charter school, or tribal compact school the amount of the salary bonus set in the operating appropriations act plus an amount for the district's or charter school's (employer) portion of mandatory fringe benefits. The amount of the annual bonus in WAC 392-140-973(2) shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. The amount of the ((~~challenging,~~)) high poverty schools bonus in WAC 392-140-973(3) shall be five thousand dollars in the 2007-08 school year. Thereafter, the ((~~challenging,~~)) high poverty schools bonus shall not increase by inflation.

(((~~(5)~~))) (6) The district ((~~or~~)), charter school, or tribal compact school shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200 no later than August 31st of the school year.

(((~~(6)~~))) (7) The salary bonus is included in the definition of "earnable compensation" under RCW 41.32.010(10).

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-975 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Requests for review and adjustment. A ((~~school~~)) district ((~~or~~)), charter school, or tribal compact school may request that the superintendent of public instruction review and adjust data and calculations used to determine funding for the salary bonus for teachers and other certificated instructional staff who hold current certification by the national board for professional teaching standards pursuant to this chapter and instructions issued by the superintendent of public instruction. Requests to review and adjust data shall be considered only for those districts ((~~or~~)), charter schools, or tribal compact schools wishing to appeal a school's eligibility designation for the ((~~challenging,~~)) high poverty schools bonus pursuant to WAC 392-140-973(3).

Requests to review and adjust data shall be considered only if the district, charter school, or tribal compact school shows that the data or calculations are in error, or other bona fide adjustments are necessary.

AMENDATORY SECTION (Amending WSR 18-17-181, filed 8/22/18, effective 9/22/18)

WAC 392-140-976 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Conditional loan program. (1) ((~~During the 2017-18 and 2018-19 school years, and~~)) Within available funds, certificated instructional staff who have met the eligibility requirements and have applied for certification from the National Board for Professional Teaching Standards may receive a conditional loan of one thousand four hundred twenty-five dollars toward the current assessment fee, not including the initial up-front candidacy payment.

(2) The conditional loan shall be an advance on the first annual bonus provided under RCW 28A.405.415. The conditional loan is provided in addition to compensation received under a district's salary allocation and shall not be included in calculations of a district's average salary and associated salary limitation under RCW 28A.400.200.

(3)(a) Conditional loan recipients who fail to receive national board certification within three years following the completion of their second year of candidacy under the National Board for Professional Teaching Standards must repay the conditional loan.

(b) Repayment shall begin after the candidate has either:

(i) Obtained the national board certification;

(ii) Exhausted all years of eligibility under the National Board for Professional Teaching Standards; or

(iii) Withdrawn their candidacy.

(4) The terms of repayment shall be pursuant to a promissory note or other instrument executed by the conditional loan recipient.

WSR 19-23-096
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed November 20, 2019, 11:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-08-089.

Title of Rule and Other Identifying Information: Chapter 182-502A WAC, Program integrity.

Hearing Location(s): On December 24, 2019, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than December 26, 2019.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 24, 2019.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by December 13, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment removes unnecessary definitions, shortens definitions for terms defined elsewhere, and uses the terms "preliminary finding" and "final notice," consistent with all types of program integrity (PI) activities.

WAC 182-502A-0401 provides detail about PI activity methods and specifies that the agency may request and evaluate records or other information. This rule also sets out requirements for the electronic or facsimile submission of records and states that the agency destroys hardcopies submitted without prior approval. The rule provides that entities must not adjust or rebill a claim subject to a PI activity until the activity and all appeals are exhausted. Subsection (8) requires that entities allow the agency access to its premises and provide requested records.

WAC 182-502A-0801 clarifies that the dispute resolution process is informal.

WAC 182-502A-0901 uses the term administrative hearing, consistent with chapter 182-526 WAC, and clarifies that there is no hearing right for a denied claim payment.

WAC 182-502A-1001 clarifies that the agency must publish metrics for contractors' audits, and it may publish metrics for the agency's own PI activities.

WAC 182-502A-1101 is a new section added for managed care organizations (MCO).

- These rules require MCOs to enforce all PI contract terms and regulations; conduct and enforce PI activities; and establish an appeals process for subcontractors and providers to contest overpayments.
- This rule also states that subcontractors and providers do not have the right to an administrative hearing on the results of the appeals process.
- Overpayment assessments that are not appealed must be recovered within sixty days of (1) the overpayment being identified and assessed; or (2) the completion of the appeals process regarding a disputed overpayment assessment.
- MCOs must report to the agency overpayments and related appeals and results.
- The agency may identify MCO overpayments to subcontractors and providers and may sanction an MCO or assess liquidated damages for MCO provider fraud, waste, and abuse, or as outlined in the parties' contract.

Reasons Supporting Proposal: The revisions make the chapter easier to understand and align with federal and state regulations.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, C.F.R. Sections 438.608 - 438.610.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Scott Best, P.O. Box 45503, Olympia, WA 98504-5503, 360-725-1396.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. New WAC 182-502A-1101 Managed care organizations, does not apply to small businesses. The amended sections of this chapter clarify other entities' responsibilities, but does not impose new costs.

November 20, 2019
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0101 ((~~Program integrity—~~))Purpose. (1) Program integrity means a system of reasonable and consistent oversight of the medicaid program.

(2) The medicaid agency conducts program integrity activities to ((~~identify and prevent or recover~~)) detect and prevent potential fraud, waste, and abuse. These activities include identifying improper ((~~agency~~)) payments and recovering overpayments.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0201 ((~~Program integrity—~~))Definitions. The definitions in this section and those found in chapter 182-500 WAC apply throughout this chapter.

Adverse determination means a finding of an overpayment identified in a program integrity activity.

((~~**Agency** means the Washington state health care authority and includes the agency's designees.~~))

Algorithm means the set of rules applied to claim or encounter data to identify overpayments.

Audit means an examination of claims data, an entity's records, or both, to determine whether the entity has complied with applicable laws, rules, regulations, and agreements.

Audit, on-site means an audit conducted partially at an entity's place of business.

Audit, self means an audit conducted by the entity and reviewed by the agency.

((~~**Contractor** is any person contracted by the agency to oversee how health benefits are provided or to administer health benefits to clients on the agency's behalf. A contractor includes, but is not limited to:~~

~~• A behavioral health organization (BHO) as defined in WAC 182-500-0015;~~

~~• A behavioral health administrative service organization (BH-ASO) as defined in WAC 182-538C-050;~~

~~• A managed care organization (MCO) as defined in WAC 182-538-050; or~~

~~• An accountable community of health.~~))

Credible allegation of fraud ((~~means the agency has investigated an allegation of fraud and concluded that the existence of fraud is more probable than not~~)) - See 42 C.F.R. 455.2.

Data mining means using software to detect patterns or aberrancies in a data set.

((~~**Designee** means a person the agency has designated to perform program integrity activities on its behalf.~~))

Educational intervention means agency-provided education to an entity prior to or following an agency-initiated program integrity activity that has identified an adverse determination. Educational intervention includes, but is not limited to, any notice of adverse determinations issued by the agency or any agency training that has failed to correct the level of payment error.

Encounter includes any service provided by a federally qualified health center, rural health clinic, or tribe, which is paid an enhanced rate; and any service provided to a Washington apple health client who is covered by an MCO or other contractor, and reported to the agency.

Entity includes current and former contractors, providers, and their subcontractors.

Extrapolation means a method of estimating an unknown value by projecting the results of a sample to the universe from which the sample was drawn.

Fraud ((~~means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to oneself or some other person. This includes any act that constitutes fraud under applicable federal or state law.~~)) - See 42 C.F.R. 455.2.

Improper payment means any payment by the agency that was more than or less than the sum to which the payee was legally entitled.

Metrics mean the quantifiable measures used to track and assess the status of program integrity activities and entity performance. ((~~Metrics include, but are not limited to:~~

~~• Adverse determinations;~~

~~• Identified improper payments;~~

~~• Cost avoidance;~~

~~• Payments; and~~

~~• Recoveries.~~))

Net payment error rate means the calculated percentage of the improper payment amount identified in the sample of claims for the audit period divided by the total payment amount sampled claims for the audit period.

Overpayment see RCW 41.05A.010, including any subsequent amendments.

((~~**Payee** includes providers who are reimbursed by agency-contracted managed care organizations.~~

~~**Person** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, public corporation, or any other legal or commercial entity.~~

~~**Program integrity activities** means those activities conducted by the agency or the agency's designees to determine compliance with applicable laws, rules, regulations, and agreements.~~))

Program integrity compliance plan means a document issued by the agency outlining the importance of ethical behavior on the part of the agency's contracted entities, as well as identified monitoring, auditing, and educational obligations an entity must comply with to remain an agency-contracted entity.

Record means any document or electronically stored information including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the entity into a reasonably usable form. This includes documentation relating to claims, encounters, and payments.

Relevant - See Federal Rule of Evidence 401.

Risk assessment means to identify potential risk of fraud, waste and abuse, and improper payments within all Washington apple health programs.

Sustained high level of payment error means the net payment error rate is equal to or exceeds five percent for the audit period.

Universe means a defined population of claims or encounters or both.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0301 ((~~Program integrity~~))Authority to conduct program integrity activities. The medicaid agency ((~~may~~)) conducts program integrity activities ((~~and designate agents to do so on its behalf,~~)) on all Title XIX, Title XXI, and state-only-funded expenditures. See 42 C.F.R. 2.54, 431, 433, 438, 447, 455, 456, 457, 495, and 1001; 45 C.F.R. 92; 42 U.S.C. 1396a; and chapters 41.05, 41.05A, and 74.09 RCW.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0401 Program integrity activities. (((~~(1) **Form.**~~)) The medicaid agency verifies entities' compliance with applicable laws, rules, regulations, and agreements through program integrity activities ((~~include:~~

~~(a) Conducting audits;~~

~~(b) Conducting reviews;~~

~~(c) Conducting investigations;~~

~~(d)~~)).

(1) **Methods.** Program integrity activity methods include, but are not limited to:

(a) Data mining to identify possible fraud, waste, and abuse (FWA) for further examination;

(b) Audits and reviews to determine compliance with federal, state, and agency rules and regulations, or to identify FWA;

(c) Investigations of suspected fraud and abuse;

(d) Algorithms to identify payment, program, and system irregularities leading to improper payments;

(e) On-site reviews and inspections of an entity's premises to ensure compliance with federal, state, and agency rules and regulations;

(f) Referral of enforcement actions against entities that have committed fraud or abuse to law enforcement agencies, or licensing agencies, or both;

(g) Technical assistance and education to prevent and identify potential FWA;

(h) Outreach to and education for entities and client communities, including how to report suspected fraud, explaining federal, state, and agency rules and requirements, conducting entity self-audits and implementing compliance programs; and

(i) Initiating and reviewing entity self-audits under WAC 182-502A-0501((~~;~~

~~(e) Applying algorithms to claim or encounter data;~~

~~(f) Conducting on-site inspections of entity locations (see subsection (4) of this section); and~~

~~(g) Verifying entity compliance with applicable laws, rules, regulations, and agreements~~)).

(2) **Location.** Program integrity activities ((~~may~~)) occur((~~:~~

~~(a) On the premises of the medicaid agency;~~

~~(b) On the premises of the entity~~)) at the agency, an entity's premises, or at both locations.

(3) **Timing.** The agency may ((~~commence~~)) begin program integrity activities concerning any current or former agency-contracted entity or that entity's agent ((~~thereof~~)) at any time up to six years after the date of service.

(4) **Notice.**

(a) The agency provides ((~~a~~)) thirty-calendar-days' notice to entities ((~~prior to~~)) before an on-site visit, except in those instances identified in (c) of this subsection.

(b) Hospitals are entitled to notice as described in RCW 70.41.045(4).

(c) The agency is not required to give notice of an on-site visit if evidence exists of danger to public health and safety or fraudulent activities.

(5) **Scope.** The agency determines the scope of a program integrity activity.

(6) **Selecting information to evaluate.**

(a) The agency may evaluate any records or other information relevant to validating that the ((~~payee~~)) entity received only those funds to which it is legally entitled. ((~~In this chapter, "relevant" has a meaning identical to Federal Rule of Evidence 401.~~))

(b) The agency may select information to evaluate by:

(i) Conducting a risk assessment of claim or encounter data;

(ii) Applying algorithms;

(iii) Data mining;

(iv) Claim-by-claim review;

(v) Encounter-by-encounter review;

(vi) Stratified random sampling;

(vii) Nonstratified random sampling; or

(viii) Applying any other method, or combination of methods, designed to identify relevant information.

(7) **Collecting records and other information to evaluate.** ((~~The entity must submit a copy of all records requested by the agency.~~))

(a) ((~~The~~)) After the agency serves notice, an entity must submit ((~~requested~~)) a copy of all records and other informa-

tion requested to the agency ((~~within~~)) by the ((~~time frame~~)) date stated in the request.

(b) The entity must submit records electronically or by facsimile and must follow the instructions for records submission included in the agency's notice, unless the agency gives the entity permission to submit a hard copy of the records.

(c) If sent electronically, records must be:

(i) Copied to secured media (e.g., CD or DVD) and sent to the address stated in the notice; or

(ii) Uploaded to the agency's secure file transfer protocol (SFTP) site.

(d) If an entity submits hard copy records without prior approval, the agency destroys the records and requires the entity to resubmit them in an electronic format.

(e) If an entity fails to timely comply with the request, the agency may:

(i) Deny the entity's claim under a prepay review process;

(ii) Issue a ((~~draft audit report or~~)) preliminary ((~~review notice~~)) finding; or

(iii) Issue a final ((~~audit report or~~)) notice ((~~of improper payment.~~

~~(c) An entity that fails to timely comply with a request under (a) of this subsection has no right to contest at an administrative hearing an agency action taken under (b)(i) of this subsection.~~

~~(d) The entity must submit records electronically, or by facsimile, unless the agency has given the entity written permission to submit the records in hard copy.~~

~~(e)~~)).

(f) Once a program integrity activity ((~~has commenced~~)) begins, the entity must retain all original records and supportive materials until the program integrity activity is completed and all issues resolved, even if the retention period for those records and materials extends beyond the period otherwise required by law.

(((~~8~~))) (g) Unless instructed to do so by the agency, the entity must not adjust or rebill a claim or encounter that is within the scope of a program integrity activity until that activity ends and any resulting appeals are exhausted.

(8) **Cooperation with on-site visits, audits, and investigations.** For an on-site visit, audit, or investigation, the entity must allow the agency access to its premises and provide any records or other information requested while on-site.

(9) **Evaluating information.**

(a) The agency may evaluate relevant information by applying any method or combination of methods reasonably calculated to determine whether an entity has complied with an applicable law, regulation, or agreement.

(b) A health care provider's bill for services, appointment books, accounting records, or other similar documents alone do not qualify as appropriate documentation of services rendered.

(c) The agency provides the entity a description of the method or combination of methods used by the agency ((~~under subsection (6) of this section~~)) to select information to evaluate.

(((~~9~~))) (10) **Nonbilled services.** Nonbilled services include any item, drug, code, or payment group that a provider does not submit on the provider's claim to the agency or contractor. When calculating improper payments, the agency does not include nonbilled services in its calculations.

(((~~10~~))) (11) **Paid-at-zero services.** The agency considers paid-at-zero services or supplies only when conducting program integrity activities involving payment groups or encounters.

(((~~11~~))) (12) **Conducting on-site audits.** The agency may conduct on-site audits at any entity location.

(a) During an on-site audit, the agency may create a copy of an entity's records that are potentially relevant to the audit.

(b) Failure to grant the agency access to the entity's records or premises constitutes failure to comply with a program integrity activity.

(((~~12~~))) (13) **Conducting interviews.** The agency may interview any person it reasonably believes has relevant information ((~~under subsection (6) of this section~~)) regarding a program integrity activity. Interviews may consist of one or more sessions.

(((~~13~~))) (14) **Costs.** The agency does not reimburse the costs an entity incurs complying with program integrity activities.

(((~~14~~))) (15) **Conducting ((~~site~~)) on-site visits.** The agency may conduct on-site inspections of any entity location to determine whether the entity is complying with all applicable laws, rules, regulations, and agreements. ((~~See subsection (4) of this section.~~))

AMENDATORY SECTION (Amending WSR 15-01-129, filed 12/19/14, effective 1/19/15)

WAC 182-502A-0501 ((~~Program integrity—~~))Entity self-audits. (1) The medicaid agency may require an entity to self-audit.

(a) The agency ((~~will~~)) gives written notice of the instruction to self-audit.

(b) The entity must acknowledge receipt of the notice within thirty calendar days of receiving it.

(c) The entity must comply with all terms included in the notice; failure to timely comply with the notice constitutes failure to comply with a program integrity activity.

(d) The agency ((~~will~~)) does not require an entity to self-audit any services or encounters that are included in an active state or federal program integrity activity, rate adjustment, cost settlement, or other payment adjustment.

(e) The agency ((~~will~~)) reviews the self-audit and states in writing whether it accepts or rejects the results of the self-audit. If the agency rejects the results it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(2) ((~~An entity may initiate a self-audit at any time to verify payments made by the agency. When the entity's self-audit and identifies an overpayment~~)) When an entity self-discloses overpayments, it must:

(a) Submit to the agency written notice of the self-audit and identify each claim included in the self-audit.

(b) Report and repay the overpayment to the agency within sixty calendar days of identifying the overpayment, unless the overpayment is ((~~one of the following~~)):

(i) Included in an active state or federal program integrity activity((.)); or

(ii) Related to a state-initiated rate adjustment, cost settlement, or other payment adjustment.

(c) The entity's overpayment report must include:

(i) The reason for the overpayment;

(ii) How the entity calculated the overpayment; and

(iii) A list of claims associated with the overpayment.

(d) The agency ((~~will~~)) reviews the self-audit and states in writing whether it accepts or rejects the methodology and findings. If the agency rejects the findings it may:

(i) Instruct the entity to repeat the self-audit; or

(ii) Audit the entity.

(e) The agency ((~~will~~)) does not accept any identified overpayment as full or final repayment before the completion of its review of the entity's self-audit findings.

(3) The entity's dispute and appeal rights under this section are identical to its rights during an audit conducted by the office of program integrity.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0601 ((~~Program integrity—~~)) Extrapolation. (1) To determine an improper payment from a sample, the medicaid agency may extrapolate to the universe from which the sample was drawn:

(a) If the audit identifies a sustained high level of payment error involving the provider; or

(b) When the agency has documented educational intervention to the provider and the education has failed to correct the provider's level of payment error.

(2) If during the course of the audit, an entity adjusts or rebills a claim or encounter that is part of the audit sample or universe, the original claim or encounter amount remains in the audit sample or universe.

(3) When the agency uses the results of an audit sample to extrapolate the amount to be recovered, the agency provides the entity with the following information:

(a) The sample size.

(b) The method used to select the sample.

(c) The universe from which the sample was drawn.

(d) Any formulas or calculations used to determine the amount of the improper payment.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0701 ((~~Program integrity activity—~~))Agency outcomes. (1) Following the medicaid agency's evaluation of an entity's records including, but not limited to, claims, encounter data, or payments, the agency may do any combination of the following:

(a) Deny a claim or claim line.

(b) ((~~Adjust or~~)) Recover an improperly paid claim.

(c) Instruct the entity to submit:

(i) Additional documentation((.)); or

(ii) A ((~~claim adjustment or a~~)) new claim. ((~~The entity must submit a claim adjustment or a new claim within sixty calendar days from the date of the agency's instruction or~~)) If the entity fails to submit a new claim within sixty calendar days, the agency ((~~will deny the claim adjustment or~~)) denies the new claim((~~. An entity has no right to an adjudicative hearing for denial under this subsection~~)) as untimely.

(d) Request a refund of an improper payment to the agency by check.

(e) Refer an overpayment to the office of financial recovery for collection.

(f) Issue a ((~~draft audit report or preliminary review notice that lists~~)) preliminary finding((~~s and alleged improper payments~~)), which the entity may dispute under WAC 182-502A-0801.

(i) If an entity agrees with the preliminary ((~~findings and alleged improper payments~~)) finding before the deadline ((~~noted~~)) stated in the ((~~report or~~)) notice, the entity must notify the agency in writing. The agency then issues a final ((~~audit report or~~)) notice ((~~of improper payment~~)).

(ii) If an entity does not respond by the agency's deadline ((~~noted in the report or notice, the agency issues a final audit report or notice of improper payment, unless the agency extends the deadline~~)), the agency issues a final notice.

(g) Issue ((~~a final audit report,~~)) an overpayment notice((~~,~~)) or final notice ((~~of improper payment~~)), which the entity may appeal under WAC 182-502A-0901.

(i) The final ((~~audit report, overpayment notice, or~~)) notice ((~~of improper payment~~)) includes:

(A) The asserted overpayment or improper payment amount;

(B) The reason for an adverse determination;

(C) The specific criteria and citation of legal authority used to make the adverse determination;

(D) An explanation of the entity's appeal rights;

(E) The appropriate procedure to submit a claims adjustment, if applicable; and

(F) One or more of the following:

(I) Directives;

(II) Educational intervention; or

(III) A program integrity compliance plan.

(ii) Upon request, the agency ((~~will~~)) allows an entity with an adverse determination the option of repaying the amount owed according to a negotiated repayment plan of up to twelve months. Interest may be calculated and charged on the remaining balance each month.

(h) Recover interest under RCW 41.05A.220.

(i) Impose civil penalties under RCW 74.09.210.

(j) Refer the entity to appropriate licensing authorities for disciplinary action.

(k) Refer the entity to the agency's medical dental advisory committee for review and potential termination of the contract or core provider agreement.

(l) Determine it has sufficient evidence to make a credible allegation of fraud. The agency ((~~will~~)) then:

(i) Refers the case to the medicaid fraud control ((~~unit~~)) division and any other appropriate prosecuting authority for further action; and

(ii) Suspends some or all Washington apple health payments to the entity unless the agency determines there is good cause not to suspend payments under 42 C.F.R. 455.23.

(2) The agency may assess an overpayment and terminate the core provider agreement if an entity fails to retain adequate documentation for services billed to the agency.

(3) At any time during a program integrity activity, the agency may issue a final ((~~audit report or a~~)) notice ((~~of improper payment~~)) if the entity:

(a) Stops doing business with the agency;

(b) Transfers control of the business;

(c) Makes a suspicious asset transfer;

(d) Files for bankruptcy; or

(e) Fails to comply with program integrity activities.

(4) The entity must repay any overpayment identified by the agency within sixty calendar days of being notified of the overpayment, except when a repayment plan is negotiated with the agency under subsection (1)(g)(ii) of this section.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0801 ((~~Program integrity—~~))Dispute resolution process. (1) An entity may informally dispute a ((~~draft audit report or~~)) preliminary ((~~review notice~~)) finding. The medicaid agency must receive any request for dispute resolution within thirty calendar days of the date the entity received the ((~~draft audit report or~~)) preliminary ((~~review notice~~)) finding. The request for dispute resolution must be in writing and include the following:

(a) The supporting evidence for each disputed ((~~adverse determination~~)) preliminary finding; and

(b) The relief sought for each disputed ((~~adverse determination~~)) preliminary finding.

(2) The dispute may include a request for a dispute resolution conference (DRC).

(a) If the agency grants the entity's request for a DRC, the DRC ((~~must~~)) occurs within sixty calendar days of the date the entity received the agency's written acceptance of the request for a DRC.

(b) At least five business days before the DRC, the entity must notify the agency of who will attend the DRC on the entity's behalf.

(3) Following the timely submission of a written request for dispute resolution under subsection (1) of this section and completion of any DRC, the agency ((~~will address~~)) addresses in writing each written ((~~dispute~~)) disputed preliminary finding raised by the entity.

(4) The agency may terminate the dispute resolution process and issue a final ((~~audit report or~~)) notice ((~~of improper payment~~)) if the entity fails to ((~~submit a timely dispute or~~)) comply with the requirements ((~~under subsection (1)~~)) of this section.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-0901 ((~~Program integrity activity—Adjudicative proceedings.~~)) Administrative hearing (formal appeal) right. (1) ((~~If an entity objects to any report or notice assessing an overpayment, the entity may request an adjudicative proceeding by following the procedure set out in RCW 41.05A.170.~~

~~(2)~~)) An entity has a right to an administrative hearing (formal appeal), and any resulting appeals process under RCW 41.05A.170 and chapter 182-526 WAC, if the agency assesses an overpayment against the entity.

(2) An entity does not have an administrative hearing right for the denial of payment of a claim.

(3) At the ((~~adjudicative proceeding~~)) administrative hearing and on appeal, the entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.

(((~~3~~))) (4) The ((~~adjudicative proceeding~~)) administrative hearing process is governed by chapter 34.05 RCW and chapter 182-526 WAC.

(((~~4~~))) (5) The medicaid agency ((~~will~~)) does not recoup overpayments until a decision in the ((~~adjudicative proceeding~~)) administrative hearing is issued and all appeals, if any, have been exhausted.

(((~~5~~))) (6) Interest on overpayments continues to accrue, but it is not collected until a decision in the ((~~adjudicative proceeding~~)) administrative hearing is issued and all appeals, if any, have been exhausted. See RCW 74.09.220.

AMENDATORY SECTION (Amending WSR 18-07-050, filed 3/14/18, effective 4/14/18)

WAC 182-502A-1001 ((~~Program integrity activity—~~))Metrics. ((~~Under RCW 74.09.195 (2)(b), the medicaid agency will, on an annual basis:~~

~~(1) Compile metrics of program integrity activities conducted by the agency and its entities; and~~

~~(2) Publish the metrics on the agency's web site.~~)) (1) The medicaid agency annually, compiles and publishes metrics for any contractor that conducts audits on the agency's behalf under RCW 74.09.195 (2)(b).

(2) The agency may publish metrics of the program integrity activities it conducts. Metrics include, but are not limited to:

(a) Adverse determinations;

(b) Identified improper payments;

(c) Cost avoidance;

(d) Payments; and

(e) Recoveries.

NEW SECTION

WAC 182-502A-1101 Managed care organizations. This section applies to entities that contract with the medicaid agency to provide services in exchange for a capitated rate.

(1) Managed care organizations (MCOs) must comply with and enforce all applicable program integrity:

(a) Federal and state laws and regulations;

(b) Terms of their contracts with the agency; and

(c) Terms of their contracts with subcontractors and providers.

(2) MCOs must:

(a) Adopt and enforce program integrity policies and procedures that guide the contractor's officers, employees, agents, and subcontractors;

(b) Include and enforce federal and state program integrity requirements in their subcontracts and in their provider application, credentialing, and recredentialing processes;

(c) Adopt and implement methods for detecting and preventing fraud, waste, and abuse to ensure payments to subcontractors and providers are proper and comply with medicaid regulations and billing instructions;

(d) Perform ongoing analyses of their authorization, utilization, claims, providers' billing patterns, and encounter data to detect improper payments;

(e) Conduct reviews, audits, and investigations of subcontractors and providers;

(f) Report to the agency any:

(i) Fraud, waste, or abuse; and

(ii) Overpayments and recoveries.

(g) Recover overpayments to any subcontractor or provider; and

(h) Refer any suspected or potential fraud to the agency and to the medicaid fraud control division or other law enforcement agency.

(3) MCOs must establish an appeals process, similar to the dispute resolution process in WAC 182-502A-801, for their subcontractors or providers to contest an assessment of an overpayment by a managed care entity.

(4) MCOs' subcontractors or providers do not have a right to an administrative hearing under chapter 34.05 RCW or chapter 182-526 WAC to contest the results of the appeals process. The MCO will provide notice and will state in the notice that there is no right to an administrative hearing.

(5) Overpayment assessments by an MCO to its subcontractor or provider that are not appealed or that are upheld after appeal must be recovered from its subcontractors or providers within:

(a) Sixty calendar days of the overpayment being identified and assessed against the subcontractor or provider; or

(b) Sixty calendar days of completion of an appeals process for the subcontractor or provider who disputes the overpayment assessment.

(6) An MCO must report to the agency:

(a) Identification of an overpayment assessed against a subcontractor or provider.

(b) Notification of a subcontractor's or provider's appeal of an overpayment assessment.

(c) Results of an appeal of an overpayment assessment from the subcontractor or provider.

(d) Recovery of the identified overpayment assessed or settlement information as a result of the appeal.

(7) The agency may sanction an MCO or assess liquidated damages when:

(a) The agency identifies fraud, waste, or abuse by an MCO provider;

(b) The MCO fails to report MCO provider overpayments; or

(c) Other situations arise as identified in the contract.