WSR 20-06-003
PERMANENT RULES
SOUTHWEST CLEAN AIR AGENCY

[Filed February 19, 2020, 2:20 p.m., effective March 21, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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 400-050 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 400-046 Application Review Process for Nonroad Engines, SWCAA 400-060 Emission Standards for General Process Units, SWCAA 400-070 General Requirements for Certain Source Categories, SWCAA 400-072 Emission Standards for Selected Small Source Categories, SWCAA 400-075 Emission Standards for Stationary Sources Emitting Hazardous Air Pollutants, SWCAA 400-105 Records, Monitoring and Reporting, SWCAA 400-106 Emission Testing and Monitoring at Air Contaminant Sources, SWCAA 400-110 Application Review Process for Stationary Sources (New Source Review), SWCAA 400-111 Requirements for New Sources in a Maintenance Plan Area, SWCAA 400-115 Standards of Performance for New Sources, SWCAA 400-171 Public Involvement, SWCAA 400-850 Actual Emissions Plantwide Applicability Limitation (PAL), SWCAA 400, Appendix A SWCAA Method 9 - Visual Opacity Determination Method. The proposed rules changes revise adoption by reference citations to cite the date in SWCAA 400-025.

Citation of Rules Affected by this Order: New SWCAA 400-025; and amending SWCAA 400-046, 400-050, 400-060, 400-070, 400-072, 400-075, 400-105, 400-106, 400-110, 400-111, 400-115, 400-171, 400-850, 400 Appendix A.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 19-21-110 on October 17, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 14, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 14, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 14, Repealed 0.

Date Adopted: February 6, 2020.

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 provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible.

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

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

(8) **Abrasive blasting.**

(a) Abrasive blasting shall be performed inside a fully enclosed booth or structure designed to capture the blast grit, overspray, and removed material. 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 val-

ues. 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 concentration corresponding to the permitted emission limit. When actual emission concentrations are significantly less than the permitted emission limit, a lower concentration span gas may be used if it is more representative of measured concentrations. Ambient air may be used to zero CO and NO_x cells/analyzer(s) and span oxygen cells/analyzer.

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

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

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

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

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

(ii) Time and date of the emission monitoring;

(iii) Identification of the personnel involved;

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

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

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

(vii) Calibration error check documentation.

AMENDATORY SECTION (Amending WSR 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 JJJ	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 ref-

erence (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 20-08-033
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed March 24, 2020, 8:28 a.m., effective May 1, 2020]

Effective Date of Rule: May 1, 2020.

Purpose: These amendments do the following: Change eligibility criteria to offer overnight planned respite services to clients with paid and unpaid caregivers; add certification and evaluation procedures to clarify the quality assurance process; clarify who can become an overnight planned respite services provider; and increase readability for people who use chapter 388-829R WAC by reorganizing content, clarifying language, and eliminating duplications and outdated information.

Citation of Rules Affected by this Order: New WAC 388-829R-011, 388-829R-012, 388-829R-013, 388-829R-220, 388-829R-225, 388-829R-230, 388-829R-235, 388-829R-240, 388-829R-245, 388-829R-250, 388-829R-255 and 388-829R-260; repealing WAC 388-829R-015, 388-829R-016, 388-829R-017, 388-829R-110, 388-829R-120, 388-829R-125, 388-829R-130, 388-829R-135, 388-829R-185, 388-829R-190, 388-829R-195 and 388-829R-200; and amending WAC 388-829R-005, 388-829R-010, 388-829R-018, 388-829R-020, 388-829R-025, 388-829R-030, 388-829R-035, 388-829R-060, 388-829R-065, 388-829R-070, 388-829R-075, 388-829R-080, 388-829R-085, 388-829R-090, 388-829R-115, 388-829R-140, 388-829R-165, 388-829R-170, 388-829R-175, 388-829R-180, 388-829R-205, 388-829R-210, and 388-829R-215.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 20-03-034 on January 7, 2020.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, Amended 23, Repealed 12.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 12, Amended 23, Repealed 12.

Date Adopted: March 23, 2020.

Cheryl Strange
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 20-09 issue of the Register.

WSR 20-08-037
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed March 24, 2020, 12:25 p.m., effective April 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revise language to clarify categories of hearings which require audio recording, WAC 137-28-300.

Add new language to WAC 137-28-170(1) authorizing the superintendent to promulgate and implement pilot programs regarding offender prison discipline.

Add new language to WAC 137-28-170(2) that requires approval in writing by the assistant secretary before pilot programs are put into effect.

Citation of Rules Affected by this Order: Amending WAC 137-28-170 and 137-28-300.

Statutory Authority for Adoption: RCW 72.01.090.

Adopted under notice filed as WSR 19-19-058 and 19-19-059 on September 16, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2020.

Stephen D. Sinclair
Secretary

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

WAC 137-28-170 Supplementary rules. (1) The superintendent may promulgate and implement pilot programs, local supplementary rules, policies, and procedures, including the creation of new sanctions.

(2) All pilot programs, local supplementary rules, policies, procedures, and new or supplemental sanctions shall be approved in writing by the assistant secretary before being ((~~put into effect~~)) implemented.

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

WAC 137-28-300 Conduct of hearing. (1) The hearing officer shall ensure that the offender's rights are protected throughout the hearing. The hearing officer shall ensure that the offender is capable of understanding the charge against him/her and the nature of the proceedings, and is able to adequately participate in the hearing. If there is reason to doubt the offender's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information.

(2) The offender shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

(a) If new evidence/information is introduced outside the hearing, the offender will have an opportunity to rebut the evidence/information during the hearing.

(b) Unless excused, an offender's failure to attend a scheduled hearing will be considered his/her waiver of the right to be present at the hearing.

(3) An audio recording will be made of all category A, B, and C hearings. A written record will also be made of all hearings.

(a) The record shall include:

(i) The name and DOC number of the offender;

(ii) The date, location, and time of the hearing;

(iii) The name of the hearing officer;

(iv) The alleged violation(s);

(v) The offender's plea(s) to the alleged violation(s);

(vi) The names of witnesses;

(vii) A summary of the statements of the offender and any witnesses, and information from any additional sources, including confidential sources;

(viii) A summary of any new evidence/information introduced outside the hearing;

(ix) A description of any physical evidence;

(x) The reasons for denying any witnesses;

(xi) Any witness statements requested by the offender or hearing officer that were not provided or were unavailable, if applicable;

(xii) Any witness questions proposed by the offender that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);

(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.

(b) If the offender is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the offender's file.

(4) The hearing officer will ensure physical evidence is handled per department policy.

(5) If an offender's behavior disrupts the hearing, he/she may be removed and the hearing will continue on the record in the offender's absence.

(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.

(7) The hearing officer has the authority to question all witnesses. The offender may submit proposed questions to be asked of witnesses, but the hearing officer may exclude questions that are irrelevant, duplicative, or unnecessary to the adequate presentation of the offender's case.

(8) Information from a confidential source will be introduced by the testimony of the staff member who received the information.

(a) The hearing officer shall, out of the presence of the offender and off the record, review the confidential information and make an independent determination regarding the reliability of the source, the credibility of the information, and the necessity of not revealing the source. In determining whether the source is reliable and the information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

WSR 20-08-039
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed March 24, 2020, 3:11 p.m., effective April 24, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of licensing is adopting these rules to enact RCW 46.81A.020 and establish a motorcycle subsidy operator program. This language was developed in

collaboration with current motorcycle safety educators as well as the Washington road riders association.

Citation of Rules Affected by this Order: New WAC 308-109-010 Definitions, 308-109-020 Motorcycle safety subsidy, and 308-109-030 Improving access to motorcycle ridership and reducing fatalities and serious injuries related to incidents involving motorcycles.

Statutory Authority for Adoption: RCW 46.81A.020, 46.01.110.

Adopted under notice filed as WSR 20-04-094 on February 5, 2020.

A final cost-benefit analysis is available by contacting Ellis Starrett, 1125 Washington Street S.E., phone 360-902-3846, email estarrett@dol.wa.gov, website https://www.dol.wa.gov/about/driversrules.html.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 24, 2020.

Damon Monroe
Rules Coordinator

Chapter 308-109 WAC

MOTORCYCLE PERMIT AND ENDORSEMENT REQUIREMENTS

NEW SECTION

WAC 308-109-010 Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Contracted training provider" means an agency, firm, provider, organization, individual, or other entity performing services as outlined in RCW 46.20.520 and 46.81A.020 and is under contract with the department.

(2) "Student" means persons who receive a pass, fail or incomplete status on a course completion report furnished to the department.

NEW SECTION

WAC 308-109-020 Motorcycle safety subsidy. (1) Subsidy funding will be made available for students who take department-approved training with contracted training providers in the state. The total amount allocated will be based upon funding available in the motorcycle safety program fiscal budget.

(2) The amount available per student is based on the total allocated to subsidy funding divided by the number of students trained in the previous year and may be weighted by future training projections.

(3) Each contracted training provider will be reimbursed for each student trained until allotted subsidy dollars are no longer available. Each contractor will submit a reimbursement request to the department in order to receive subsidy funds.

NEW SECTION

WAC 308-109-030 Improving access to motorcycle ridership and reducing fatalities and serious injuries related to incidents involving motorcycles. The department will set aside no more than ten percent of the available subsidy program funds in order to employ other strategies to reduce fatalities and serious injuries related to incidents involving motorcycles and improving access to motorcycle ridership.

WSR 20-08-059
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed March 25, 2020, 3:57 p.m., effective April 25, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: ESSB 5741 (66th legislature, 2019 regular session) amended sections of chapter 43.371 RCW to transfer authority and oversight of the state all-payer health care claims database from the office of financial management (OFM) to the health care authority (HCA) effective January 1, 2020. To implement the transfer, the rules were recodified to chapter 182-70 WAC, under WSR 19-24-090.

HCA is filing these rules to replace:

* References to OFM with HCA; and
* Citations to sections of chapter 82-75 WAC with sections of chapter 182-70 WAC.

Citation of Rules Affected by this Order: Amending WAC 182-70-010, 182-70-030, 182-70-050, 182-70-060, 182-70-070, 182-70-080, 182-70-090, 182-70-100, 182-70-110, 182-70-200, 182-70-210, 182-70-230, 182-70-240, 182-70-250, 182-70-260, 182-70-290, 182-70-300, 182-70-400, 182-70-410, 182-70-420, 182-70-430, 182-70-440, 182-70-450, 182-70-470, 182-70-510, 182-70-520, 182-70-550, 182-70-560, 182-70-570, 182-70-600, 182-70-605, 182-70-610, 182-70-615, 182-70-620, 182-70-630, 182-70-635, 182-70-640, 182-70-645, 182-70-650, 182-70-655, 182-70-665, 182-70-705, 182-70-710, 182-70-715, and 182-70-720.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 43.371.020.

Adopted under notice filed as WSR 20-03-074 on January 10, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 45, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 45, Repealed 0.

Date Adopted: March 25, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-010 Purpose. (1) Chapter 43.371 RCW establishes the framework for the creation and administration of a statewide all-payer health care claims database.

(2) RCW 43.371.020 directs the ((~~office of financial management~~)) health care authority to establish a statewide all-payer health care claims database to support transparent public reporting of health care information. The ((~~office~~)) authority shall select a lead organization to coordinate and manage the database. The lead organization shall also contract with a data vendor to perform data collection, processing, aggregation, extracts, and analytics.

(3) RCW 43.371.070 mandates that the director of the ((~~office of financial management~~)) health care authority adopt rules necessary to implement chapter 43.371 RCW. In addition, RCW 43.371.010 and 43.371.050 direct the adoption of specific rules by the director.

(4) The purpose of this chapter is to implement chapter 43.371 RCW, to facilitate the creation and administration of the Washington statewide all-payer health care claims database.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-030 Additional definitions authorized by chapter 43.371 RCW. The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Authority" means the Washington state health care authority.

"Capitation payment" means a payment model where providers receive a payment on a per "covered person" basis, for specified calendar periods, for the coverage of specified health care services regardless of whether the patient obtains care. Capitation payments include, but are not limited to, global capitation arrangements that cover a comprehensive set of health care services, partial capitation arrangements for subsets of services, and care management payments.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Claimant" means a person who files a workers compensation claim with the Washington state department of labor and industries.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data policy committee" or "DPC" is the advisory committee required by RCW 43.371.020 (5)(h) to provide advice related to data policy development.

"Data release committee" or "DRC" is the advisory committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by either the lead organization and the data requestor, or the ((~~office~~)) authority and the data requestor, or the ((~~office~~)) authority and a Washington state agency, that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Days" means calendar days.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the ((~~office of financial management~~)) health care authority.

"Fee-for-service equivalent" means the amount that would have been paid by the payer for a specified service if the service had not been capitated or paid under an alternative payment formula like treatment episodes, or the fee amount reflected in the payer's internal fee schedule(s) for services that are not paid on a fee-for-service basis.

"Fee-for-service payment" means a payment model where providers receive a negotiated or payer-specified rate for a specific health care service provided to a patient.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the ((~~office of financial management~~)) health care authority to coordinate and manage the database as provided in chapter 43.371 RCW.

"Malicious intent" means the person acted willfully or intentionally to cause harm, without legal justification.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

((~~"Office" means the Washington state office of financial management.~~))

"Person" means an individual; group of individuals however organized; public or private corporation, including profit and nonprofit corporations; a partnership; joint venture; public and private institution of higher education; a state, local, and federal agency; and a local or tribal government.

"PFI" means the proprietary financial information as defined in RCW 43.371.010(12).

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"WA-APCD program director" means the individual designated by the ((~~office~~)) authority as responsible for the oversight and management of the operations of the statewide all payer health care claims database authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the covered person is a Washington state resident, or the state of Washington has primary jurisdiction, and whose laws, rules and regulations govern the members' and dependents' insurance policy or health benefit plan.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-050 Data submission schedule. (1) Data suppliers shall submit the required health care data in accordance with the schedule provided in this section.

(2) **Test file.**

(a) At least sixty calendar days prior to the data suppliers' first required submission, the lead organization will notify the data supplier in writing regarding the obligation to file. The lead organization will schedule time to work with the data supplier to establish a schedule for when the data supplier shall submit the initial test files.

(b) No more than ninety calendar days after notification of changes in requirements in the data submission guide, the data supplier shall submit initial test files. This deadline may be extended by the lead organization when it determines that additional time will be needed in order for the change to be implemented.

(3) **Submission file.** Data and claim files shall be submitted to the WA-APCD on a quarterly basis. On or before April 30th, July 31st, October 31st and January 31st of each year, data and claim files shall be submitted for all nondenied adjudicated claims paid in the preceding three months.

(4) **Resubmission file.** Failure to conform to the requirements of this chapter or the data submission guide shall result in the rejection of the applicable data and claim files. The lead organization shall notify the data supplier when data and claim files are rejected. All rejected files must be resubmitted in the appropriate, corrected format within fifteen business days of notification unless a written request for an extension is received by the lead organization before the expiration of this fifteen business day period.

(5) **Claims run-out file.** If health care coverage is terminated for a Washington covered person, the data supplier shall submit data for a six month period following the health care coverage termination date.

(6) **Replacement file.**

(a) A data supplier may replace a complete data file, claim file or both data and claim file submission. Requests must be made to the lead organization with a detailed explanation as to why the replacement is needed. The lead organization shall make a recommendation to the ((~~office~~)) authority as to whether to approve or deny the request. The approval recommendation shall also state whether the approval is for the entire period requested or for a period less than requested.

(b) The ((~~office~~)) authority shall approve or deny the request and provide written notification to the requestor within thirty calendar days of receipt of the request. The ((~~office~~)) authority decision on the request for a replacement file will be provided in writing. If the ((~~office~~)) authority does not approve the complete request for a replacement file, the written notification will include the reason for the denial or approval of the shorter period of time.

(c) Requests may not be made more than one year after the end of the month in which the file was submitted unless the data supplier can establish exceptional circumstances for the replacement. The lead organization may recommend approval and the ((~~office~~)) authority may approve a request for more than one year for exceptional circumstances. The ((~~office~~)) authority shall approve or deny the request using the process set forth in (b) of this subsection.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-060 Historical data submission. (1) The purpose of collecting historical data into the WA-APCD is to permit the systematic analysis of the health care delivery system including evaluation of the effectiveness of the Patient

Protection and Affordable Care Act signed into law on March 23, 2010.

(2) The lead organization will provide written notification to the data suppliers when the WA-APCD is ready to accept the submission of historical data. Data suppliers shall submit the historical data within sixty days of notification. Requests for an extension of time to submit historical data shall be made in accordance with WAC ((~~82-75-080(3)~~)) 182-70-080(3).

(3) "Historical data" means covered medical services claim files, pharmacy claim files, dental claim files, member eligibility and enrollment data files, and provider data files with necessary identifiers for the period January 1, 2013, through December 31, 2016, or through the end of the quarter immediately prior to the first regular quarterly submission due in accordance with the data submission schedule.

(4) The ((~~office~~)) authority may grant an exception to this section and approve the filing of historical data for a period less than the period specified in subsection (3) of this section. Requests for an exception under this subsection shall be made to the lead organization within fifteen calendar days of being notified in accordance with subsection (2) of this section. The lead organization shall make a recommendation to the ((~~office~~)) authority as to whether to approve or deny the request. The ((~~office~~)) authority may approve the request for good cause.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-070 Data submission guide. (1) Data files and claim files shall be submitted to the WA-APCD in accordance with the requirements set forth in this chapter and the data submission guide.

(2) The lead organization shall develop the data submission guide with input from stakeholders. The lead organization shall develop a process to allow for stakeholder review and comment on drafts of the data submission guide and all subsequent changes to the guide. The ((~~office~~)) authority shall have final approval authority over the data submission guide and all subsequent changes.

(3) The lead organization shall notify data suppliers before changes to the data submission guide are final. Notification shall occur no less than one hundred twenty calendar days prior to the effective date of any change.

(4) Upon good cause shown, data suppliers may be granted an extension to comply with any changes to the data submission guide. Requests for extensions or exceptions shall be made in accordance with WAC ((~~82-75-080~~)) 182-70-080.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-080 Waivers and extensions. (1) The ((~~office~~)) authority may grant a waiver of reporting requirements or an extension of time to a reporting requirement deadline based on extenuating circumstances.

(2) **Waivers.**

(a) A data supplier may request a waiver from submission for a period of time due to extenuating circumstances affecting the data supplier's ability to comply with the reporting requirement for that period.

(b) The request shall be for no more than one reporting year and shall contain a detailed explanation as to the reason the data supplier is unable to meet the reporting requirements.

(c) A request for a waiver must be submitted to the lead organization at least sixty calendar days prior to the applicable reporting deadline. The lead organization shall make a recommendation to the ((~~office~~)) authority as to whether to approve or deny the request. The approval recommendation shall also state whether the approval is for the entire period requested or for a period less than requested.

(d) The ((~~office~~)) authority may approve a request for extenuating circumstances. Approval may be for a time period shorter than requested. The ((~~office~~)) authority shall approve or deny the request and provide written notification to the requester within thirty calendar days of receipt of the request. The ((~~office~~)) authority decision on the request for a waiver will be provided in writing. If the ((~~office~~)) authority does not approve a request for a waiver, the written notification will include the reason for the denial.

(3) **Extensions.**

(a) A data supplier may request an extension of time for submitting a quarterly report or the resubmission of a report due to extenuating circumstances affecting the data supplier's ability to submit the data by the deadline.

(b) The request shall be for no more than one reporting quarter and shall contain a detailed explanation as to the reason the data supplier is unable to meet the reporting requirements for that quarter.

(c) A request for an extension must be submitted to the lead organization at least thirty calendar days prior to the applicable reporting deadline unless the requestor is unable to meet this deadline due to circumstances beyond the data supplier's control. If unable to meet this deadline, the data supplier shall notify the lead organization in writing as soon as the data supplier determines that an extension is necessary.

(d) The lead organization shall make a recommendation to the ((~~office~~)) authority as to whether to approve or deny the request. The approval recommendation shall also state whether the approval is for the entire period requested or for a period less than requested.

(e) The ((~~office~~)) authority may approve a request for extenuating circumstances. The ((~~office~~)) authority shall approve or deny the request and provide written notification to the requestor within fifteen calendar days from when the lead organization receives the request from the data supplier. The ((~~office~~)) authority decision on the request for an extension will be provided in writing. If the ((~~office~~)) authority does not approve a request for an extension, the written notification will include the reason for the denial.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-090 Penalties for failure to comply with reporting requirements. (1) The ((~~office~~)) authority may assess fines for failure to comply with the requirements of this chapter including, but not limited to:

(a) General reporting requirements.

(b) Health care claim files and data files requirements.

(c) Health care claim files and data files submission requirements.

The ((~~office~~)) authority will not assess fines when the data supplier is working in good faith with the lead organization to comply with the reporting requirements.

(2) Unless the ((~~office~~)) authority has approved a waiver or extension, the ((~~office~~)) authority may assess a fine for failure to comply with general reporting requirements including, but not limited to, the following occurrences:

(a) Failure to submit health care claim files or data files for a required line of business; and

(b) Submitting health information for an excluded line of business.

(3) Unless the ((~~office~~)) authority has approved a waiver or extension, the ((~~office~~)) authority may assess a fine for failure to comply with health care claim file or data file requirements including, but not limited to, the following occurrences:

(a) Submitting a health care claim or data file in an unapproved layout;

(b) Submitting a data element in an unapproved format;

(c) Submitting a data element with unapproved coding; and

(d) Failure to submit a required data element.

(4) Unless the ((~~office~~)) authority has approved a waiver or extension, the ((~~office~~)) authority may assess a fine for failure to comply with health care claim file or data file submission requirements including, but not limited to, the following occurrences:

(a) Failure to comply with WAC ((~~82-75-050~~)) 182-70-050 (Data submission schedule);

(b) Rejection of a health care claim or data file by the data vendor that is not corrected by the data supplier; and

(c) Transmitting health care claim or data files using an unapproved process.

(5) Upon the failure to comply with a reporting requirement in this chapter, the ((~~office~~)) authority shall first issue a warning notice to a data supplier. The warning notice shall set forth the nature of the failure to comply and offer to provide assistance to the data supplier to correct the failure.

(6) A data supplier that fails to comply with the same reporting requirement in this chapter for which it previously received a warning notice, may be assessed a penalty of two hundred fifty dollars per day, not to exceed a maximum of twenty-five thousand dollars per occurrence. Each failure to comply with a reporting requirement for a reporting period is considered a separate occurrence.

(7) For good cause shown, the ((~~office~~)) authority may suspend in whole or in part any fine assessed in accordance with this section.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-100 Administrative review. (1) Data suppliers may request an administrative review of an ((~~office~~)) authority decision to deny a request for an extension or waiver, or an assessment of a fine.

(2) A request for an administrative review may be initiated by a written petition filed with the ((~~office~~)) authority within thirty calendar days after notice of the denial or assessment of a fine. The petition shall include the following information:

(a) Data supplier's name, address, telephone number, email address and contact person.

(b) Information about the subject of the appeal including remedy requested.

(c) A detailed explanation as to the issue or area of dispute, and why the dispute should be decided in the data supplier's favor.

(3) The petition and all materials submitted will be reviewed by the director or director's designee. The reviewing official may request additional information or a conference with the data supplier. A decision from the reviewing official shall be provided in writing to the data supplier no later than thirty calendar days after receipt of the petition. A denial of the petition will include the reasons for the denial.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-110 Appeals. (1) A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC ((~~82-75-100~~)) 182-75-100.

(2) Request for an appeal must be submitted in writing to the ((~~office~~)) authority within fifteen calendar days after receipt of written notification of denial of its administrative review.

(3) Within ten business days of receipt of a written notice of appeal, the ((~~office~~)) authority will transmit the request to the office of administrative hearings (OAH).

(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other ((~~office~~)) authority employees may attend a hearing, and the ALJ will notify the appellant when other ((~~office~~)) authority employees are attending. The appellant may appear in person or may be represented by an attorney.

(c) **Decisions.** The decision of the ALJ shall be considered a final decision. Either party or both may file a petition for review of the final decision to superior court. If neither party files an appeal within the time period set by RCW

34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thirty days from service of the final decision.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-200 General data request and release procedures. (1) The lead organization must adopt clear policies and procedures for data requests and data release. At a minimum, the lead organization, in coordination with the data vendor, must develop procedures for making a request for data, how data requests will be reviewed, how decisions will be made on whether to grant or disapprove release of the requested data, and data release processes. The policies and procedures must be approved by the ((~~office~~)) authority.

(2) The lead organization should help data requestors identify the best ways to describe and tailor the data request, understand the privacy and security requirements, and understand the limitations on use and data products derived from the data released.

(3) The lead organization must maintain a log of all requests and action taken on each request. The log must include at a minimum the following information: Name of requestor, data requested, purpose of the request, whether the request was approved or denied, if approved the date and data released, and if denied the date and reason for the denial. The lead organization shall post the log on the WA-APCD website that the lead organization is required to maintain.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-210 Procedures for data requests. (1) The lead organization must use an application process for data requests.

(2) In addition to the requirements in RCW 43.371.050 (1), at a minimum, the application must require the following information:

(a) Detailed information about the project for which the data is being requested including, but not limited to:

(i) Purpose of the project and data being requested, and level of detail for the data requested.

(ii) Methodology for data analysis and timeline for the project.

(iii) If applicable, copy of an Institutional Review Board (IRB) protocol and approval or Exempt Determination and application for the IRB exemption for the project review. Researchers must use an IRB that has been registered with the United States Department of Health and Human Services Office of Human Research Protections. The IRB may however be located outside the state of Washington.

(iv) Staffing qualifications and resumes.

(v) Information on third-party organizations or individuals who may have access to the requested data as part of the project for which the data is requested. The information provided must include the same information required by the requestor, as applicable. Data cannot be shared with third parties except as approved in a data request.

(b) Information regarding whether the requestor has, within the three years prior to the data request date, violated a data use agreement, nondisclosure agreement or confidentiality agreement. Such information must include, but not be limited to, the facts surrounding the violation or data breach, the cause of the violation or data breach, and all steps taken to correct the violation or data breach and prevent a reoccurrence.

(c) Information regarding whether the requestor has, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach and has been found in violation and assessed a penalty, been a party to a criminal or civil action relating to a data breach and found guilty or liable for that breach, or had to take action to notify individuals due to a data breach for data maintained by the data requestor or for which the data requestor was responsible for maintaining in a secure environment.

(d) Submittal of the project's data management plan (DMP), which DMP must include the information required in WAC ((~~82-75-220~~)) 182-70-220.

(e) Require all recipients of protected health information (PHI) to provide an attestation from an authorized individual that the recipient of the requested data has data privacy and security policies and procedures in place on the date of the request and will maintain these policies and procedures for the project period, these policies and procedures comply with Washington state laws and rules, and meet the standards and guidelines required by the Washington state office of chief information officer. Data recipients must also attest that recipients will provide copies of the data privacy and security policies and procedures upon request by the lead organization.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-230 Review of data requests. (1) The lead organization must establish a transparent process for the review of data requests, which includes a process for public review for specific requests. The process must include a timeline for processing requests, and notification procedures to keep the requestor updated on the progress of the review. The process must also include the ability for the public to comment on requests that include the release of protected health information or proprietary financial information or both. The ((~~office~~)) authority shall have final approval over the process and criteria used for review of data requests and all subsequent changes.

(2) The lead organization must post on the WA-APCD website all requests that include the release of protected health information or proprietary financial information, and the schedule for the receipt of public comment on the request. The time frame for public comment should not be less than fourteen calendar days. The lead organization must post the final decision for the request within seven days after the decision is made.

(3) The lead organization has the responsibility to convene the DRC when needed to review data requests and make a recommendation to the lead organization as to whether to approve or deny a data request. The lead organization must establish an annual meeting schedule for DRC and post the

schedule on the website. The DRC must review requests for identifiable data and provide a recommendation regarding data release. The lead organization may request the DRC to review other data requests. The review must include a technical review of the data management plan by an expert on the DRC, staff from the office of chief information officer, or other technical expert. The DRC may recommend that the requestor provide additional information before a final decision can be rendered, approve the data release in whole or in part, or deny the release. For researchers who are required in RCW 43.371.050 (4)(a) to have IRB approval, the DRC may recommend provisional approval subject to the receipt of an IRB approval letter and protocol and submittal of a copy of the IRB letter to the lead organization.

(4) The lead organization may only deny a data request based on a reason set forth in WAC ((~~82-75-280~~)) 182-70-280.

(5) The lead organization must notify the requestor of the final decision. The notification should include the process available for review or appeal of the decision.

(6) The lead organization must post all data requests and final decisions on the WA-APCD website maintained by the lead organization.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-240 Data release. (1) Upon approval of a request for data, the lead organization must provide notice to the requestor. The notice must include the following:

(a) The data use agreement (DUA). The DUA will include a confidentiality statement to which the requesting organization or individual must adhere.

(b) The confidentiality agreement that requestors and all other individuals who will have access to the released data, whether an employee of the requestor, subcontractor or other contractor or third-party vendor including data storage or other information technology vendor, who will have access to or responsibility for the data must sign. At a minimum, the confidentiality agreement developed for recipients must meet the requirements of RCW 43.371.050 (4)(a).

(c) Requestors must comply with the requirements for data release in WAC ((~~82-75-500~~)) 182-70-500 through ((~~82-75-520~~)) 182-70-520.

(2) A person with authority to bind the requesting organization must sign the DUA; or in the case of an individual requesting data, the individual must sign the DUA.

(3) All employees or other persons who will be allowed access to the data must sign a confidentiality agreement.

(4) No data may be released until the lead organization receives a signed copy of the DUA from the data requestor and signed copies of the confidentiality agreement.

(5) The lead organization must maintain a record of all signed agreements and retain the documents for at least six years after the termination of the agreements.

(6) Data fees, if applicable, must be paid in full to the lead organization. Itemized data fees assessed for each data request are subject to public disclosure and should be included in the approval that is posted on the WA-APCD website.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-250 Data use agreement. (1) The lead organization must develop a standard data use agreement. The ((~~office~~)) authority must approve the final form of the DUA, and all substantial changes to the form.

(2) At a minimum, the DUA shall include the following provisions:

(a) A start date and end date. The end date must be no longer than the length of the project for which the data is requested. The DUA may provide for the ability to extend the end date of the agreement upon good cause shown.

(b) The application for data should be incorporated into the DUA and attached as an exhibit to the agreement. There should be an affirmative provision that data provided for one project cannot be used for any other project or purpose.

(c) Data can be used only for the purposes described in the request. The data recipient agrees not to use, disclose, market, release, show, sell, rent, lease, loan or otherwise grant access to the data files specified except as expressly permitted by the DUA, confidentiality agreement if any and the approval letter.

(d) With respect to analysis and displays of data, the data recipient must agree to abide by Washington state law and rules, and standards and guidelines provided by the lead organization.

(e) A requirement for completion of an attestation by an officer or otherwise authorized individual of the data requestor that the data requestor will adhere to the WA-APCD's rules and lead organization policies regarding the publication or presentation to anyone who is not an authorized user of the data.

(f) A requirement that all requestor employees and all other individuals who access the data will sign a confidentiality agreement prior to data release. The confidentiality requirements should be set out in the DUA and include the consequences for failure to comply with the agreement.

(g) A requirement that any new employee who joins the organization or project after the data requestor has received the data and who will have access to the data must sign a confidentiality agreement prior and passed required privacy and security training prior to accessing the data.

(3) The ((~~office~~)) authority or lead organization may audit compliance with data use agreements and confidentiality agreements. The requestor must comply and assist, if requested, in any audit of these agreements.

(4) Breach of a data use agreement or confidentiality agreement may result in immediate termination of the data use agreement. The data requestor must immediately destroy all WA-APCD data in its possession upon termination of the data use agreement. Termination of the data use agreement is in addition to any other penalty or regulatory action taken or that may be taken as a result of the breach.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-260 Confidentiality agreement. (1) The lead organization must develop a standard confidentiality agreement, as required, before data may be released. The

((~~office~~)) authority must approve the final form for confidentiality agreement, and all substantial changes to the form.

(2) The confidentiality agreement must be signed by all requestor employees and other third parties who may have access to the data.

(3) In addition to other penalties or regulatory actions that may be taken, including denial of future data requests, breach of a confidentiality agreement may result in immediate termination of the agreement. If an individual breaches the confidentiality agreement, the lead organization must review the circumstances and determine if the requestor's agreement should be terminated or only the agreement with the individual who caused the breach should be terminated. When an agreement is terminated for breach of the confidentiality agreement, the data requestor or individual whose agreement is terminated must immediately destroy all WA-APCD data in his or her possession and provide an attestation of the destruction to the lead organization within seven business days. Attestation of destruction should be in the form as prescribed by the lead organization. Failure to destroy data or provide attestation of the destruction may result in other penalties or regulatory actions.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-290 Process to review a declined data request. (1) A data requestor may request an administrative review of the lead organization's decision to deny a request for data.

(2) A request for an administrative review may be initiated by a written petition filed with the ((~~office~~)) authority and also provided to the lead organization within thirty calendar days after notice of the denial. The petition shall include the following information:

(a) Data requestor's name, address, telephone number, email address and contact person.

(b) Information about the subject of the review including remedy requested.

(c) A detailed explanation as to the issue or area of dispute, and why the dispute should be decided in the data requestor's favor.

(3) The petition and all materials submitted will be reviewed by the director or director's designee. The reviewing official may request additional information or a conference with the data requestor. A decision from the reviewing official shall be provided in writing to the data requestor no later than thirty calendar days after receipt of the petition. A denial of the petition will include the reasons for the denial.

(4) The ((~~office~~)) authority will post the petition and final decision on the ((~~office~~)) authority website. The lead organization will provide a link to the petition and decision from its WA-APCD website.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-300 Process to appeal of final denial of data request. (1) A data requestor may appeal the denial of its administrative review conducted in accordance with WAC ((~~82-75-290~~)) 182-70-290.

(2) Request for an appeal must be submitted in writing to the ((~~office~~)) authority within fifteen calendar days after receipt of written notification of denial of its administrative review, with a copy provided to the lead organization.

(3) The lead organization must provide notice and a copy of the appeal request to affected data suppliers within five days of being served. Data suppliers may seek to intervene in an appeal by submitting a petition to intervene to the office of administrative hearings, and serving the petition to intervene on the ((~~office~~)) authority, lead organization and requestor within five days of being notified of the appeal.

(4) Within ten business days of receipt of a written notice of appeal, the ((~~office~~)) authority will transmit the request to the office of administrative hearings (OAH).

(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other ((~~office~~)) authority employees may attend a hearing, and the ALJ will notify the appellant when other ((~~office~~)) authority employees are attending. The appellant may appear in person or may be represented by an attorney.

(c) **Decisions.** The decision of the ALJ shall be considered a final decision. A petition for review of the final decision may be filed in the superior court. If no appeal is filed within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thirty days from service of the final decision.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-400 Privacy and security. (1) RCW 43.371.070 (1)(d) authorizes the director of the ((~~office of financial management~~)) health care authority to adopt rules providing procedures for ensuring that all data received from data suppliers are securely collected and stored in compliance with applicable state and federal law.

(2) RCW 43.371.070 (1)(e) authorizes the director of the ((~~office of financial management~~)) health care authority to adopt rules providing procedures for ensuring compliance with state and federal privacy laws.

(3) WAC ((~~82-75-410~~)) 182-70-410 through ((~~82-75-470~~)) 182-70-470 provide the procedures required in subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-410 Requirements for data vendor. (1) The data vendor must enter into an agreement with the lead organization that contains the following requirements:

(a) A provision that the data vendor is responsible for ensuring compliance of all aspects of WA-APCD operations with all applicable federal and state laws, and the state's security standards established by the office of the chief information officer;

(b) Provisions that the data vendor is required to keep logs and documentation on activities conducted pursuant to the security plan consistent with the state records retention requirements, which the ((~~office~~)) authority can request to verify that the security protocols are being followed;

(c) A provision that requires a detailed security process, which should include, but is not limited to, details regarding security risk assessments and corrective actions plans when deficiencies are discovered;

(d) Provisions that require secure file transfer for all receipt and transmission of health care claims data; and

(e) Provisions for encryption of data both in motion and at rest using latest industry standard methods and tools for encryption, consistent with the standards of the office of the chief information officer.

(2) The data vendor must enter into a legally binding data use and confidentiality agreement with the lead organization. The agreement must include provisions that restrict the access and use of data in the WA-APCD to that necessary for the operation and administration of the database as authorized by chapter 43.371 RCW.

(3)(a) The data vendor must annually engage the services of an independent third-party security auditor to conduct a security audit to verify that the infrastructure, environment and operations of the WA-APCD are in compliance with federal and state laws, Washington state information technology security standards, and the contract with the lead organization. The data vendor must prepare a plan to correct any deficiency found in the annual security audit.

(b) The data vendor must submit its latest HITRUST common security framework (CSF) report and the latest statement on standards for attestation engagements (SSAE) No. 16 service organization control 2 (SOC 2) Type II audit report covering the data vendor's third-party data center, to the ((~~office~~)) authority within thirty calendar days of receiving the final report. The data vendor must develop and implement an appropriate corrective action plan, including remediation timelines, when necessary, and provide the corrective action plan to the ((~~office~~)) authority or the office of the state chief information security officer upon request.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-420 Data submission. (1) All data suppliers must submit data to the WA-APCD using a secure transfer protocol and transmission approach approved by the office of the state chief information security officer.

(2) All data suppliers must encrypt data using the latest industry standard methods and tools for encryption consistent with the data vendor's requirements for data encryption as required in WAC ((~~82-75-410~~)) 182-70-410.

(3) The data vendor must provide a unique set of login credentials for each individual acting on behalf of or at the direction of an active data supplier.

(4) The data vendor must ensure that the data supplier can only use strong passwords consistent with the state standards when securely submitting data or accessing the secure site.

(5) The data vendor must automatically reject and properly dispose of any files from data suppliers that are not properly encrypted.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-430 WA-APCD infrastructure. (1) The data vendor must limit access to the secure site. Personnel allowed access must be based on the principle of least privilege and have an articulable need to know or access the site.

(2) The data vendor must conduct annual penetration testing and have specific requirements around the timing of penetration and security testing of infrastructure used to host the WA-APCD by the outside firm. The results of penetration and security testing must be documented and the data vendor must provide the summary results, along with a corrective action plan and remediation timelines, to the ((~~office~~)) authority and the office of the state chief information security officer within thirty calendar days of receipt of the results.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-440 Accountability. (1) The data vendor must submit an annual report to the lead organization, the ((~~office~~)) authority, and the office of the state chief information security office that includes the following information:

(a) Summary results of its independent security assessment; and

(b) Summary of its penetration testing and vulnerability assessment results.

(2) The data vendor, upon reasonable notice, must allow access and inspections by staff of the office of the state chief information security officer to ensure compliance with state standards.

(3) The data vendor, upon reasonable notice, must allow on-site inspections by the ((~~office~~)) authority to ensure compliance with laws, rules and contract terms and conditions.

(4) The data vendor must have data retention and destruction policies that are no less stringent than that required by federal standards, including the most current version of NIST *Special Publication 800-88, Guidelines for Media Sanitization*.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-450 Data vendor and lead organization compliance with privacy and security requirements. (1) To ensure compliance with privacy and security requirements, the data vendor must immediately report to the

((~~office~~)) authority and the office of the state chief information security officer any data breach of the WA-APCD or knowledge that a data recipient is not complying with confidentiality requirements in accordance with ((~~OFM-approved~~)) health care authority-approved data breach notification procedures. The data vendor may not unilaterally disclose any information related to a breach of the WA-APCD without written permission from the ((~~office~~)) authority and the state chief information security officer.

(2) Upon receiving approval from the ((~~office~~)) authority and the state chief information security officer, the data vendor must notify the data supplier if the data it supplied has been the subject of a data breach for which the reporting requirements in subsection (1) of this section apply. The data vendor is responsible for complying with the applicable notification provisions in state and federal law.

(3) To ensure compliance with privacy and security requirements, the lead organization must:

(a) Conduct follow-up with data recipients of PHI or PFI on a schedule developed by the lead organization;

(b) Request data recipients share any manuscripts, reports, or products with lead organization and ((~~office~~)) the authority;

(c)(i) Require data recipients to complete a project completion form, attesting that the project has terminated and data have been destroyed in accordance with the data use agreement;

(ii) Require the data recipient to provide the written verification that the data has been destroyed in a manner no less stringent than is required in WAC ((~~82-75-440(4)~~)) 182-70-440(4).

(d) Track all requests and research projects and follow up with the data recipient when the research or project is expected to be completed; and

(e) Follow up and require written verification that data is destroyed.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-470 State oversight of compliance with privacy and security requirements. In order to ensure compliance with privacy and security requirements and procedures, the ((~~office~~)) authority or the office of chief information officer or both may request from the lead organization any or all of the following:

(1) Audit logs pertaining to accessing the WA-APCD data;

(2) Completion of a security design review as required by Washington state IT security standards;

(3) Documentation of compliance with OCIO security policy (OCIO policy 141.10 Securing information technology assets standards);

(4) All data use agreements.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-510 Data formatting rules apply to proprietary financial information. (1) The format rules apply to all proposed uses of proprietary financial information submitted to the WA-APCD. The format rules apply to three categories of users for which proprietary financial information may be disclosed in accordance with chapter 43.375 RCW:

(a) Lead organization;

(b) Federal agencies, Washington state agencies, and units of Washington local government; and

(c) Researchers with IRB approval.

(2) The lead organization shall assess a data requestor's proposed methods submitted in compliance with RCW 43.371.050 (1)(c) and WAC ((~~82-75-210(2)~~)) 182-70-210(2), which require the data requestor to submit a description of the proposed methodology for data analysis. The lead organization's assessment shall include evaluating the data requestor's methodology as it pertains to the calculation and presentation of cost information that rely upon proprietary financial information.

(3) To evaluate data requestor methodology, the lead organization shall adopt criteria to prevent the disclosure or determination of proprietary financial information to any third party.

(4) The data release advisory committee shall advise the lead organization on the criteria to be adopted.

(5) Nothing in this rule shall contravene the authorized uses of proprietary financial information as provided in RCW 43.371.050.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-520 Elements to safeguard the use of proprietary financial information. All reports, analytics or other information drawn from the WA-APCD that an approved WA-APCD data user as defined in WAC ((~~82-75-510(1)~~)) 182-70-510(1) shares with any third party shall comply with the following restrictions.

(1) Allowed amount data may be made available for public use.

(2) Allowed amount data shall be provider or payer deidentified.

(3) Provider-specific allowed amount data shall be suppressed if that payer accounts for more than fifty percent of that provider's patient market share that payer deidentified data could readily be payer reidentified.

(4) Absolute or relative allowed cost information shall be communicated in ways that mitigate the potential to mislead data users including, but not limited to:

(a) Median cost mitigates the impact of outlier cases;

(b) Cost variation statistics (ranges, confidence intervals) illustrate the typical distribution of costs around a point estimate;

(c) Categorization, stratification or risk-adjustment techniques make like-comparisons of patient populations;

(d) Minimum case volume rules and/or reporting of volume alerts users to the universe or sample underlying the cost result; and

(e) Cell size suppression rules are followed whereby cells containing cost data based on a number of patients or providers that is below a minimum threshold count is suppressed.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-550 Requirement for fee schedules and processes. (1) RCW 43.371.020 (5)(g) requires the lead organization to develop a plan for the financial sustainability of the database, and charge fees for reports and data files to fund the database.

(2) The ((~~office~~)) authority must approve any fee established by the lead organization.

(3) RCW 43.371.070 requires the ((~~office~~)) authority to establish by rule, procedures for the lead organization to establish these statutorily required fees.

(4) The process to develop, review and approve fee schedules will be open and transparent, and allow for stakeholder feedback.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-560 Process to establish fee schedules. (1) The lead organization must develop a draft fee schedule consistent with the requirements in RCW 43.371.020 (5)(g). The lead organization must maintain documentation that supports the development of and final decisions regarding the fee schedule.

(2) The lead organization must present the draft fee schedule and supporting documentation to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the development and draft fee schedule presented.

(3) The DPC must review the draft fee schedule, supporting documentation, and adopt recommendations, including the basis for each recommendation, as to whether the fee schedule should be approved by the ((~~office~~)) authority. The DPC must provide the recommendations to the lead organization for its consideration.

(4) The lead organization must review the DPC recommendations and make any changes to the draft fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(5) The lead organization must provide the ((~~office~~)) authority the draft fee schedule, as modified, supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must also provide any other available data requested by the ((~~office~~)) authority that supports the development and draft fee schedule provided to the ((~~office~~)) authority.

(6) The ((~~office~~)) authority shall post on the agency website the draft fee schedule, and solicit public comment for thirty days. The ((~~office~~)) authority may also convene a stakeholder meeting to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the ((~~office~~)) authority decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the ((~~office~~)) authority.

After the comment period, the ((~~office~~)) authority will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The ((~~office~~)) authority shall provide the final determination to the lead organization, publish the final determination on the agency website, and send notification through the ((~~office~~)) authority listserv or other electronic means.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-570 Process to modify fee schedules. (1) Fee schedules shall be reissued no less frequently than on an annual basis. The reissuance of the fee schedule can include maintaining the fee schedule without modification, modifying the fee schedule, or a combination of these two actions.

(2) The lead organization shall review fee schedules at least once every year. Annual period shall be from the date upon which the fee schedule is adopted. The review shall include whether any fee should be changed, removed from the schedule, or new fees added. The lead organization must maintain documentation that supports the recommended changes from the review of the fee schedule.

(3) The lead organization must present the changes, supporting documentation, and proposed modifications to the fee schedule to the data policy committee for review and feedback. The lead organization must provide any other available data requested by the DPC that supports the proposed modifications to the fee schedule.

(4) The DPC must review the changes, supporting documentation, and proposed modifications to the fee schedule and adopt recommendations, including the basis for each recommendation, as to whether the changes should be accepted and the modified fee schedule approved by the ((~~office~~)) authority. The DPC must provide the recommendations to the lead organization for its consideration.

(5) The lead organization must review the DPC recommendations and make any changes to the recommendations and proposed modifications to the fee schedule based on the recommendations. The lead organization must document which recommendations it implemented into the fee schedule. For those recommendations that the lead organization did not act upon, the lead organization must document the reasons why each recommendation was not accepted.

(6) The lead organization must provide the ((~~office~~)) authority the proposed modifications to the fee schedule, as modified, with supporting documentation, the DPC recommendations, and the reasoning for why the lead organization did not make changes for any recommendation not accepted. The lead organization must provide any other available data requested by the ((~~office~~)) authority that supports the changes and proposed modified fee schedule provided to the ((~~office~~)) authority.

(7) The ((~~office~~)) authority shall post on the agency website the recommendations and proposed modifications to the fee schedule, and solicit public comment for thirty days. The ((~~office~~)) authority may also convene a stakeholder meeting

to provide an opportunity for interested parties another avenue to give feedback on the draft fee schedule. If the ((~~office~~)) authority decides to hold a stakeholder meeting, the meeting may be in person, by telephone or other electronic means, as determined by the ((~~office~~)) authority.

(8) After the comment period, the ((~~office~~)) authority will review all the stakeholder feedback, recommendations of the DPC, and any data received from the lead organization and make a final determination regarding the fee schedule. The ((~~office~~)) authority shall provide the final determination to the lead organization, publish the final determination on the agency website, and send notification through the ((~~office~~)) authority listserv or other electronic means.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-600 Causes for penalties. (1) The ((~~office~~)) authority may impose penalties for the inappropriate disclosure or use of direct patient identifiers, indirect patient identifiers, and proprietary financial information received from, provided to, or contained in the WA-APCD.

(2) Any penalty imposed pursuant to this subchapter and in accordance with RCW 43.371.050 shall be in addition to and does not prevent the assessment of penalties authorized by state or federal law, contract, or court order.

(3) The following definitions apply to WAC ((~~82-75-600~~)) 182-70-600 through ((~~82-75-665~~)) 182-70-665.

(a) "Inappropriate disclosures" or "uses" are those that are inconsistent or in violation of the requirements in RCW 43.371.050. In addition, inappropriate disclosure or uses also include defamatory or malicious use and disclosure or use and disclosure with the intent to cause harm.

(b) "Protected information" is direct patient identifiers, indirect patient identifiers and proprietary financial information.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-605 Alleging a violation. (1) Any person, as defined in WAC ((~~82-75-030~~)) 182-70-030, may bring to the attention of the lead organization or the ((~~office~~)) authority information concerning the inappropriate disclosure or use of protected information as set forth in RCW 43.371.050 and WAC ((~~82-75-600~~)) 182-70-600.

(2) The ((~~office~~)) authority must conduct an investigation unless it determines that the complaint is without merit or is frivolous, regardless of how the ((~~office~~)) authority has received the information that led to that belief, including information derived from any audit conducted by or at the direction of the ((~~office~~)) authority.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-610 Complaints. (1) Any complaint filed pursuant to WAC ((~~82-75-605~~)) 182-70-605 must be in writing and include the following information, if known:

(a) The name and contact information of the complainant;

(b) The specific facts supporting the violation alleged, including the dates, and locations for all events upon which the complaint is made;

(c) The facts upon which the complaint is based; and

(d) The name of the individual(s) and organization the complainant believes has committed an inappropriate disclosure or use of protected information and should be subject to penalties.

(2) If sufficient information is provided as required in subsection (1)(b) through (d) of this section, the ((~~office~~)) authority will accept the complaint without the complainant's name and contact information. In cases when the name and contact information is not provided, the complainant waives any future contact or notification from the ((~~office~~)) authority regarding the complaint.

(3) The complainant must provide additional information if requested by the lead organization or the ((~~office~~)) authority.

(4) Complaints alleging the lead organization made inappropriate disclosure or use of protected information must be filed directly with the ((~~office~~)) authority. The complaint must contain the information required in subsection (1) of this section. If a complaint of this nature is filed with the lead organization, the lead organization must forward to the ((~~office~~)) authority within one business day of receipt, without further review or action.

(5) Regardless of whether the complaint was filed with the ((~~office~~)) authority or the lead organization, except as provided by subsection (4) of this section, the lead organization will review the complaint and compile any information it may have related to the complaint. The lead may review the complaint as to whether the facts as presented support the finding of an inappropriate disclosure or use of protected information. The lead organization must forward the complaint, and all supporting documents to the ((~~office~~)) authority, including the result of any initial review the lead may have undertaken.

(6) The ((~~office~~)) authority must review the information provided by the lead organization pursuant to subsection (5) of this section.

(a) If the ((~~office~~)) authority determines that the facts as presented, if true, support the finding of an inappropriate disclosure or use of protected information, the ((~~office~~)) authority will conduct an investigation to substantiate the allegations.

(b) If the ((~~office~~)) authority determines that the facts as presented, if true, do not support the finding of an inappropriate disclosure or use of protected information, the ((~~office~~)) authority will close the complaint without further action. If closed without further action, the notice will include the basis for that determination.

(c) The ((~~office~~)) authority may conduct the investigation, or contract with a third party, other than the lead organization or a subcontractor to the lead organization, to conduct the investigation.

(7) The ((~~office~~)) authority will notify the complainant in writing and state whether the complaint will be investigated or closed without action.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-615 Investigation. (1) If the ((~~office~~)) authority accepts a complaint and conducts an investigation, the ((~~office~~)) authority will notify the person(s) that is the subject of the complaint in writing.

(2) The notice will include the following information:

(a) The factual allegations supporting each alleged inappropriate disclosure or use of protected information violation in terms sufficient to put the persons on notice of the specific reasons for the investigation;

(b) The statutory and administrative code provisions addressing the allegations, if applicable;

(c) A request that the person provide a written response to the allegations including any documents that support the response, and notice that failure to respond will result in the ((~~office~~)) authority making a decision without the person's input; and

(d) A directive to cease using or destroy the data received from the WA-APCD until the investigation has been completed and the person is notified that he/she may again use the data provided. The person shall complete an attestation that the person has complied with this directive. A violation of this directive shall be grounds for finding a separate violation of the inappropriate disclosure or use of protected information.

(3) The lead organization and the data vendor shall cooperate with the investigator and timely respond to requests for information or documents during the course of an investigation.

(4) At the conclusion of the investigation, the investigator will issue a report to the WA-APCD program director that includes the following information:

(a) Facts found by the investigator;

(b) Whether the facts support finding inappropriate disclosures or uses of protected information; and

(c) A recommendation to dismiss the complaint with no further action or to issue an order with a penalty, which recommendation may include a penalty amount and any other actions that the ((~~office~~)) authority should take as a result of the violation(s).

(5) A finding that the person inappropriately disclosed or used protected information is a violation for purposes of this section. In the case of a continuing inappropriate disclosure or use of protected information, each day of the inappropriate disclosure or use is a separate violation.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-620 Notice of violation and recommended penalty. (1) If, based on the investigation, the WA-APCD program director determines that the facts support finding an inappropriate disclosure or use of protected information and imposition of a penalty as set forth in the investigation report, the WA-APCD program director shall notify the alleged violator. The WA-APCD program director shall cause service of the notice of violation and recommended penalty on each alleged violator. The notice shall include the following information:

(a) Date when the recommended penalty and other actions imposed will take effect, if not appealed;

(b) Each inappropriate disclosure or use of protected information found and the facts supporting each inappropriate disclosure or use of protected information;

(c) The recommended penalty, other monetary amounts to be assessed, including the cost of the investigation, and any other action authorized by WAC ((~~82-75-625~~)) 182-70-625 and ((~~82-75-630~~)) 182-70-630;

(d) If the person will be prohibited from receiving data from the WA-APCD in the future, the period of the recommended prohibition;

(e) Notice that each alleged violator may request a hearing in accordance with WAC ((~~82-75-645~~)) 182-70-645 to dispute the finding of a violation, the recommended penalty, or both. The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the ((~~office~~)) authority shall issue a final, unappealable order.

(2) In the event the alleged violator or violators do not timely request a hearing, the WA-APCD program director will provide the report and recommendation to the director, who shall issue a final order, which will include the date upon which the order becomes effective.

(3) The WA-APCD program director shall provide a copy of the investigation report and the notice prepared pursuant to subsection (1) of this section to all data suppliers with protected information identified in the report as having been inappropriately disclosed or used. This notice is separate and in addition to any other notice required by law.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-630 Nonmonetary penalties that may be imposed upon finding a violation of inappropriate disclosures or uses. In addition to the monetary penalties set forth in WAC ((~~82-75-625~~)) 182-70-625, if a person has been found to have made inappropriate disclosures or uses of direct patient identifiers, indirect patient identifiers, and proprietary financial information received from the WA-APCD, the director may order the following nonmonetary penalties:

(1)(a) Direct WA-APCD program director to review the contract between the person and lead organization to determine whether the finding is a breach of that contract, and take appropriate action including requiring all WA-APCD data provided to be destroyed, termination of the contract, and seeking damages if the contract has been breached; or

(b) In lieu of (a) of this subsection, direct the lead organization to review whether the finding is also a breach of any contract between the person and the lead organization, and take appropriate action including requiring all WA-APCD data provided to be destroyed, termination of the contract, and seeking damages if the contract has been breached, unless the lead organization is the violator, in which case (a) of this subsection shall apply.

(2) Demand the destruction of all WA-APCD data provided, whether stand alone or combined with other data, all data products, and derivatives produced from WA-APCD data, and in the person's custody or contract, including proof

of the destruction in the form and manner as prescribed by the ((~~office~~)) authority;

(3) Bar the person from receiving any data from the WA-APCD for a designated period of time; and

(4) Notify the funding entity of the violation, when the violation involves research funded by another entity, and any other regulatory agency that has oversight over the person or the data that the person requested.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-635 Penalty ranges based on culpability. (1) In determining the appropriate sanction, including the amount of any civil penalty, the director will consider the level of culpability associated with the violation. The levels of culpability, in the order of less severe to severe, are as follows:

(a) Did not know. The person did not know and by exercising reasonable diligence, would not have known the violation had occurred.

(b) Reasonable cause. The person knew, or by exercising diligence should have known, that the violation had taken place, but the person did not act with willful negligence.

(c) Willful neglect - Corrected. The violation was due to the person's conscious, intentional failure or reckless indifference, and the violation was corrected within thirty days from the date the person knew or with reasonable diligence should have known of the inappropriate disclosure or use.

(d) Willful neglect - Uncorrected. The violation was due to the person's conscious, intentional failure or reckless indifference, and the violation was not corrected within thirty days from the date the person knew or with reasonable diligence should have known of the inappropriate disclosure or use.

(2) The penalty ranges for each level of culpability and the yearly cap for violations of a similar nature are as follows:

Culpability Category	Penalty Range per Violation	Yearly Cap for Similar Violations
Did not know	$5,000 - $100,000	$2,500,000
Reasonable cause	$10,000 - $250,000	$2,500,000
Willful neglect - Corrected	$50,000 - $500,000	$5,000,000
Willful neglect - Not corrected	$100,000 - $1,500,000	$10,000,000

(3) Violations that involve malicious intent, as that term is defined in WAC ((~~82-75-030~~)) 182-70-030, are not subject to the yearly caps set forth in subsection (2) of this section.

(4) The director may assess a penalty outside the penalty ranges set forth in subsection (2) of this section if the person has previously committed the same violation in the same culpability category.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-640 Other factors that may be considered in determining the penalty for a violation of this chapter. In addition to the culpability category set forth in WAC ((~~82-75-635~~)) 182-70-635, to determine the penalty amount, the director may consider the following factors:

(1) The nature and extent of the violation including, but not limited to, the number of persons affected, the duration of the violation, and whether the violation was done with malicious intent.

(2) The nature and extent of the harm resulting from the violation including, but not limited to:

(a) Whether the violation resulted in physical harm;

(b) Whether the violation resulted in financial harm;

(c) Whether the violation resulted in harm to a person's reputation;

(d) Whether the violation hindered an individual's ability to obtain health care;

(e) Whether the violation resulted in any other actual or potential harm.

(3) The history of compliance with the statutory, regulatory, and contractual provisions related to prior data release from the WA-APCD including, but not limited to:

(a) Whether the current violation is the same or similar to previous noncompliance;

(b) Whether and to what extent the person has attempted to correct previous noncompliance;

(c) How the person has responded to the complaint, investigation and any assistance provided to correct and mitigate any effect from the violation;

(d) How the person has responded to prior complaints for the same or similar violations including, but not limited to, changes in process or procedures for securing the confidentiality of the protected information, changes in recruitment, retention, or training requirements for employees or contractor with access to protected information.

(4) Any other factor relevant to the violation or the impact of the violation including, but not limited to:

(a) The frequency of incidents and/or duration of the wrongdoing;

(b) Whether there is a pattern or prior history of wrongdoing;

(c) Whether the person has accepted responsibility for the wrongdoing and recognizes the seriousness of violation;

(d) Whether the person paid or agreed to pay any criminal, civil, and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution;

(e) Whether the person has cooperated fully during the investigation and any administrative action. In determining the extent of cooperation, the director may consider when the cooperation began and whether the person disclosed all known pertinent information;

(f) The kind of positions held by the individuals involved in the wrongdoing;

(g) Whether the person fully investigated the circumstances surrounding the violation and, if so, made the result of the investigation available to the reviewing official, and took appropriate corrective action or remedial measures;

(h) Whether effective standards of conduct and internal control systems were in place at the time the violation occurred;

(i) Whether appropriate disciplinary action was taken against the individuals responsible for the activity that constitutes the violation.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-645 Process to appeal determination of a violation and assessed penalties. (1) Each person to whom a notice of a violation and recommended penalty is issued may request a hearing to be conducted in accordance with WAC ((~~82-75-655~~)) 182-70-655.

(2) The request for a hearing must be submitted to the director in writing within thirty days after receipt of written notification of the notice provided pursuant to WAC ((~~82-75-620~~)) 182-70-620. The person requesting a hearing must also provide a copy of the request to the WA-APCD program director.

(3) The request for hearing must be in writing and specify:

(a) The name of the person requesting the hearing and the person's or representative's contact information;

(b) The items, facts, or conclusions in the notice of violation being contested; and

(c) The basis for contesting the penalty, if applicable, including any mitigating factors upon which the person relies and the outcome the requestor is seeking.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-650 Informal dispute resolution prior to a hearing. (1) The following procedures are available for informal dispute resolution prior to a hearing that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(2) Settlements. Any appeal of a notice of violation and recommended penalty before the director or director's designee, for which a hearing has not yet been held, may be resolved by settlement. The respondent shall communicate his or her request to the WA-APCD program director, setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(3) Stipulations. The WA-APCD program director and respondent may agree to terms of any stipulation of facts, violations, and/or penalty. If a stipulation is reached, the WA-APCD program director shall prepare the stipulation for presentation to the director.

(a) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The WA-APCD program director shall sign for the ((~~office~~)) authority. Any stipulation shall be provided no later than three business days preceding the hearing.

(b) The director has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the director accepts the stipulation or modifies the stipulation with the agreement of the parties, the director shall enter an order in conformity with the terms of the stipulation. If the director rejects the stipulation or one or both of the parties does not agree to the director's proposed modifications to the stipulation, then the hearing shall be scheduled and held.

(4) Informal dispute resolution negotiations shall be informal and without prejudice to the rights of the participants.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-655 Hearing. (1) The director may conduct the hearing or delegate to an individual within the ((~~office~~)) authority or to an administrative law judge pursuant to chapter 34.12 RCW the authority to conduct the hearing and prepare a proposed decision. The WA-APCD program director, on behalf of the ((~~office~~)) authority, shall be the petitioner in the hearing, and the requestor shall be the respondent.

(2) The WA-APCD program director shall have the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 10-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final written decision that includes findings of fact, conclusions of law, and if appropriate, the penalty. The director shall cause service of the final decision on all parties.

(5) If the director's designee or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law and if appropriate the penalty. The proposed decision shall also include instructions on how to file objections and written arguments or briefs with the director. Objections and written arguments and briefs must be filed within twenty days from the date of receipt of the proposed decision.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-665 Posting of information related to inappropriate disclosure or use of protected information. (1) Except as provided in subsection (2) of this section, the ((~~office~~)) authority will maintain a website to provide public access to information related to the inappropriate disclosure or use of protected information. For each complaint for which an investigation is conducted, the ((~~office~~)) authority will post the complaint, the information that the lead organization provided to the ((~~office~~)) authority pursuant to WAC ((~~82-75-610(5)~~)) 182-70-610(5), investigation report and final disposition of the complaint. In addition, if the complaint finds a violation, the ((~~office~~)) authority will post the notice of violation and the final hearing order, if a hearing is requested.

(2) If any of the records specified for posting in subsection (1) of this section contains confidential or protected information, that information is privileged and not subject to disclosure under the Public Records Act, chapter 42.56 RCW, and will be redacted from any documents posted on the ((~~office~~)) authority website.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-705 When an audit may be commenced. (1) The ((~~office~~)) authority may initiate a random audit to ensure compliance with data release requirements. A data requestor may not be subject to a random audit more frequently than once every three years.

(2) The ((~~office~~)) authority may initiate an audit of a data supplier or data requestor upon notice that one of the following events has occurred:

(a) Reports from the data vendor that there is a material change, without justification or a reasonable basis for the change provided by the data supplier, in the number of claims submitted from a data supplier. Before submitting a report under this subsection, the data vendor should have worked with the data supplier to cure any inadvertent data submission issues.

(b) Reports from the data vendor that certain types of claims are missing for a data supplier.

(c) Notice that the data requestor or data user is publishing data in reports that are not compliant with data use agreements. Violations of the data use agreements are subject to penalties in accordance with the process set forth in this chapter ((~~82-75 WAC~~)).

(d) Notice that the data requestor or data user is publishing PFI or PHI not in compliance with state or federal requirements.

(e) Other occurrence that could indicate that the data supplier or data requestor is not in compliance with the requirements in law or rule regarding the WA-APCD.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-710 Audit process. (1) Once the ((~~office~~)) authority determines an audit will be conducted, either as a random audit or based on a triggering event set forth in WAC ((~~82-75-705(2)~~)) 182-70-705(2), the ((~~office~~)) authority shall provide written notice to the subject of the audit at least thirty days before the start of the audit. The notice must include the name of the company or individuals who will be conducting the audit and the subject of the audit, including the time period for which the audit covers, which time period must be no longer than the prior three years. If the audit is the result of a triggering event, the notice will include information regarding the triggering event. The notice will also include information regarding the audit entrance conference that has been scheduled to take place within fourteen days before the audit will begin. The notice will include the location, date and time and contact person for the entrance conference and such other information as required. The ((~~office~~)) authority will work with the subject of the audit to ensure sufficient time is provided between providing the written notice, the date of the entrance conference, and the start of the audit.

(2) The subject of the audit is required to cooperate with the auditor, providing the information as requested. If there is a dispute during the audit, the issue should be brought to the attention of the WA-APCD program director, who will resolve the dispute. Both the auditor and the subject of the audit will be provided an opportunity to present its issues regarding the dispute, either in writing or in person. The WA-APCD program director may engage a mediator to help resolve the dispute.

(3) The auditor will be required to prepare an audit report. A draft of the audit report shall be provided to the subject of the audit for review and comments. The subject of the audit should be provided no less than thirty days to provide comment to the draft report.

(4) After receiving and reviewing any comments, and revising the draft audit report as deemed necessary, the auditor shall schedule an exit conference with the subject of the audit to review the audit and final audit report. The subject of the audit shall be provided an opportunity to submit comments or responses to the findings in the audit. The auditor shall provide a deadline, not less than thirty days after the exit conference for submission of any response to the audit.

(5) The auditor shall issue a final audit report no later than thirty days after the deadline for submission of any response. The report shall be provided to the ((~~office~~)) authority and the subject of the audit. The final report shall include any response provided by the subject of the audit. The ((~~office~~)) authority shall publish the final report on the agency website.

(6) The auditor shall be required to sign a confidentiality/nondisclosure agreement if the auditor will have access to any confidential or proprietary information.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-715 Audit guide. (1) The ((~~office~~)) authority shall develop the audit guide with input from the data vendor, lead organization, and stakeholders. The audit guide shall include, but is not limited to, the following topics:

(a) The audit standards that will be used for all audits to ensure compliance with generally accepted auditing practices;

(b) The process that will be used to select an auditor, including the auditor qualifications, process to identify and address conflicts of interest;

(c) Specific contract terms that should be included in any contract with an auditor including retention and destruction process for working papers.

(2) The ((~~office~~)) authority shall develop a process to allow for stakeholder review and comment on drafts of the audit guide and all subsequent changes to the guide. Prior to final adoption, the DPC shall be given an opportunity to review and provide comments on the draft audit guide to the ((~~office~~)) authority. The ((~~office~~)) authority shall have final approval authority over the adoption of the audit guide and all subsequent changes.

(3) The ((~~office~~)) authority shall conduct an annual review of the audit guide. The ((~~office~~)) authority will post notice that the review is being conducted and provide a time period for stakeholder to submit comments and changes to the audit guide. The ((~~office~~)) authority will follow the process developed pursuant to subsection (2) of this section for review and comment on draft changes to the guide.

(4) The ((~~office~~)) authority shall notify data suppliers before changes to the audit guide are final. Notification shall occur no less than one hundred twenty calendar days prior to the effective date of any change.

(5) The version of the audit guide that is in effect must be posted on the ((~~OFM~~)) authority website. Notice should be given through the ((~~office~~)) authority listserv when a new audit guide is posted.

AMENDATORY SECTION (Amending WSR 19-24-090, filed 12/3/19, effective 1/1/20)

WAC 182-70-720 Audit findings of a violation. (1) If the audit finds that any person has violated laws, rules or data use agreements, the WA-APCD program director shall require an investigation be conducted in accordance with WAC ((~~82-75-615~~)) 182-70-615. If the investigation determines that a violation or violations have occurred, the ((~~office~~)) authority will take appropriate action as set forth in this chapter ((~~82-75-WAC~~)).

(2) In addition to any other penalties authorized by law or rule, the audited party may be required to pay the cost of the audit if, after an investigation conducted pursuant to this chapter ((~~82-75-WAC~~)), a violation is found. The subject of the audit may contest the requirement to pay the cost of the audit or the amount requested using the appeal process set forth in this chapter ((~~82-75-WAC~~)) for the appeal of penalties.

WSR 20-08-066
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed March 26, 2020, 10:24 a.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: WAC 246-933-990 Veterinarian fees and renewal cycle, and 246-935-990 Veterinary technician fees and renewal cycle. The department has adopted rules to amend the fees for veterinarians and veterinary technicians to include the HEAL-WA access fee as required by SB 5000 (chapter 140, Laws of 2019) and to reduce the fees for duplication and verification services to align and standardize those fees across the licenses for all health professions. The HEAL-WA web portal supports public health by providing the participating practitioners with access to the latest evidence based health care information. Having access to current, peer reviewed, clinical information improves a practitioner's ability to respond to patient questions, develop treatment plans, and deliver quality care to their patients. Fee reductions for duplication and verification of a license is part of the department's effort to standardize these fees across health professional licenses given the amount and type of work is the same.

Citation of Rules Affected by this Order: Amending WAC 246-933-990 and 246-935-990.

Statutory Authority for Adoption: RCW 43.70.112, 43.70.250, 43.70.280, and SB 5000 (chapter 140, Laws of 2019).

Adopted under notice filed as WSR 20-03-173 on January 22, 2020.

Changes Other than Editing from Proposed to Adopted Version: We discovered a mathematical error in the calculated totals. Due to the error and the total line being inconsistent with agency standards, we have removed the total line. This does not change any of the fee values.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: March 24, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 16-21-062, filed 10/14/16, effective 2/1/17)

WAC 246-933-990 Veterinarian fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
((~~Original application~~))	
Initial state license	
State jurisprudence examination (((~~initial/retake~~)) initial or retake)	$210.00
((~~Initial state license~~)) Application	145.00
UW online access surcharge (HEAL-WA)	16.00
Initial specialty license	((~~140.00~~))
Application	140.00
UW online access surcharge (HEAL-WA)	16.00
Temporary permit	215.00
State or specialty license renewal	
Renewal	160.00
Impaired veterinarian assessment	25.00
UW online access surcharge (HEAL-WA)	16.00

Title of Fee	Fee
Late renewal penalty	80.00
Expired license reissuance	90.00
Retired active license and renewal	
Renewal	70.00
Impaired veterinarian assessment	25.00
UW online access surcharge (HEAL-WA)	16.00
Late renewal penalty	50.00
Duplicate license	((~~30.00~~)) 10.00
Verification of license	((~~30.00~~)) 25.00

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-935-990 Veterinary technician fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

((

~~Title of Fee~~	~~Fee~~
~~State examination (initial/retake)~~	~~$160.00~~
~~Initial license~~	~~110.00~~
~~Renewal~~	~~75.00~~
~~Late renewal penalty~~	~~80.00~~
~~Expired license reissuance~~	~~80.00~~
~~Duplicate license~~	~~30.00~~
~~Certification of license~~	~~30.00~~

))

Title of Fee	Fee
Initial state license	
State jurisprudence examination (initial or retake)	$160.00
Application	110.00
UW online access surcharge (HEAL-WA)	16.00
License renewal	
Renewal	75.00
UW online access surcharge (HEAL-WA)	16.00
Late renewal penalty	80.00
Expired license reissuance	80.00
Duplicate license	10.00
Verification of license	25.00

WSR 20-08-069
PERMANENT RULES
DEPARTMENT OF HEALTH
(Washington Medical Commission)

[Filed March 26, 2020, 11:17 a.m., effective April 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-918-005, 246-918-800, and 246-918-895, Physician assistants—Medical quality assurance commission. The Washington medical commission (commission) is adopting amendments to these sections of rule to change all references to medical quality assurance commission to Washington medical commission in accordance with SB 5764 (chapter 55, Laws of 2019).

Citation of Rules Affected by this Order: Amending WAC 246-918-005, 246-918-800, and 246-918-895.

Statutory Authority for Adoption: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, SB 5764 (chapter 55, Laws of 2019).

Adopted under notice filed as WSR 19-19-071 on September 17, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 24, 2020.

Melanie de Leon
Executive Director

Chapter 246-918 WAC

PHYSICIAN ASSISTANTS—WASHINGTON MEDICAL ((~~QUALITY ASSURANCE~~)) COMMISSION

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington ((~~state~~)) medical ((~~quality assurance~~)) commission.

(2) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substan-

tially equivalent organization(s) approved by the commission.

(3) "Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a sponsoring physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

(4) "NCCPA" means National Commission on Certification of Physician Assistants.

(5) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

(6) "Physician" means an individual licensed under chapter 18.71 RCW.

(7) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

(8) "Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(9) "Supervising physician" means a sponsoring or alternate physician providing clinical oversight for a physician assistant.

(a) "Sponsoring physician" means any physician licensed under chapter 18.71 RCW and identified in a delegation agreement as providing primary clinical and administrative oversight for a physician assistant.

(b) "Alternate physician" means any physician licensed under chapter 18.71 or 18.57 RCW who provides clinical oversight of a physician assistant in place of or in addition to the sponsoring physician.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-800 Intent and scope. The rules in WAC 246-918-800 through 246-918-935 govern the prescribing of opioids in the treatment of pain.

The ((~~Washington state medical quality assurance~~)) commission (((~~commission~~))) recognizes that principles of quality medical practice dictate that the people of the state of Washington have access to appropriate and effective pain relief. The appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain as well as reduce the morbidity, mortality, and costs associated with untreated or inappropriately treated pain. For the purposes of these rules, the inappropriate treatment of pain includes nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments.

The diagnosis and treatment of pain is integral to the practice of medicine. The commission encourages physician assistants to view pain management as a part of quality medical practice for all patients with pain, including acute, perioperative, subacute, and chronic pain. All physician assistants should become knowledgeable about assessing patients' pain and effective methods of pain treatment, as well as statutory requirements for prescribing opioids, including co-occurring prescriptions. Accordingly, these rules clarify the commission's position on pain control, particularly as related to the use of controlled substances, to alleviate physician assistant uncertainty and to encourage better pain management.

Inappropriate pain treatment may result from a physician assistant's lack of knowledge about pain management. Fears of investigation or sanction by federal, state, or local agencies may also result in inappropriate treatment of pain. Appropriate pain management is the treating physician assistant's responsibility. As such, the commission will consider the inappropriate treatment of pain to be a departure from standards of practice and will investigate such allegations, recognizing that some types of pain cannot be completely relieved, and taking into account whether the treatment is appropriate for the diagnosis.

The commission recognizes that controlled substances including opioids may be essential in the treatment of acute, subacute, perioperative, or chronic pain due to disease, illness, trauma, or surgery. The commission will refer to current clinical practice guidelines and expert review in approaching cases involving management of pain. The medical management of pain should consider current clinical knowledge and scientific research and the use of pharmacologic and nonpharmacologic modalities according to the judgment of the physician assistant. Pain should be assessed and treated promptly, and the quantity and frequency of doses should be adjusted according to the intensity, duration, impact of the pain, and treatment outcomes. Physician assistants should recognize that tolerance and physical dependence are normal consequences of sustained use of opioids and are not the same as opioid use disorder.

The commission is obligated under the laws of the state of Washington to protect the public health and safety. The commission recognizes that the use of opioids for other than

legitimate medical purposes poses a threat to the individual and society. The inappropriate prescribing of controlled substances, including opioids, may lead to drug diversion and abuse by individuals who seek them for other than legitimate medical use. Accordingly, the commission expects that physician assistants incorporate safeguards into their practices to minimize the potential for the abuse and diversion of controlled substances.

Physician assistants should not fear disciplinary action from the commission for ordering, prescribing, dispensing or administering controlled substances, including opioids, for a legitimate medical purpose and in the course of professional practice. The commission will consider prescribing, ordering, dispensing or administering controlled substances for pain to be for a legitimate medical purpose if based on sound clinical judgment. All such prescribing must be based on clear documentation of unrelieved pain. To be within the usual course of professional practice, a physician assistant-patient relationship must exist and the prescribing should be based on a diagnosis and documentation of unrelieved pain. Compliance with applicable state or federal law is required.

The commission will judge the validity of the physician assistant's treatment of the patient based on available documentation, rather than solely on the quantity and duration of medication administration. The goal is to control the patient's pain while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

These rules are designed to assist physician assistants in providing appropriate medical care for patients.

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation, and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment.

Therefore, it should be recognized that adherence to these rules will not guarantee an accurate diagnosis or a successful outcome. The sole purpose of these rules is to assist physician assistants in following a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care.

For more specific best practices, the physician assistant may refer to clinical practice guidelines including, but not limited to, those produced by the agency medical directors' group, the Centers for Disease Control and Prevention, or the Bree Collaborative.

AMENDATORY SECTION (Amending WSR 18-23-061, filed 11/16/18, effective 1/1/19)

WAC 246-918-895 Pain management specialist—Chronic pain. A pain management specialist shall meet one or more of the following qualifications:

(1) If an allopathic physician assistant or osteopathic physician assistant must have a delegation agreement with a physician pain management specialist and meets the educational requirements and practice requirements listed below:

(a) A minimum of three years of clinical experience in a chronic pain management care setting;

(b) Credentialed in pain management by an entity approved by the ((~~Washington state medical quality assurance~~)) commission for an allopathic physician assistant or the Washington state board of osteopathic medicine and surgery for an osteopathic physician assistant;

(c) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and

(d) At least thirty percent of the physician assistant's current practice is the direct provision of pain management care or in a multidisciplinary pain clinic.

(2) If an allopathic physician, in accordance with WAC 246-919-945.

(3) If an osteopathic physician, in accordance with WAC 246-853-750.

(4) If a dentist, in accordance with WAC 246-817-965.

(5) If a podiatric physician, in accordance with WAC 246-922-750.

(6) If an advanced registered nurse practitioner, in accordance with WAC 246-840-493.

WSR 20-08-076
PERMANENT RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed March 26, 2020, 4:18 p.m., effective April 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Repeal chapter 170-03 WAC and WAC 110-115-4201 through WAC 110-15-2645.

Citation of Rules Affected by this Order: Repealing WAC 170-03-0010, 170-03-0020, 170-03-0030, 170-03-0040, 170-03-0050, 170-03-0060, 170-03-0070 170-03-0080, 170-03-0090, 170-03-0100, 170-03-0110, 170-03-0120, 170-03-0130, 170-03-0140, 170-03-0150, 170-03-0160, 170-03-0170, 170-03-0180, 170-03-0190, 170-03-0200, 170-03-0210, 170-03-0220, 170-03-0230, 170-03-0240, 170-03-0250, 170-03-0260, 170-03-0270, 170-03-0280, 170-03-0290, 170-03-0300, 170-03-0340, 170-03-0350, 170-03-0360, 170-03-0390, 170-03-0400, 170-03-0410, 170-03-0420, 170-03-0430, 170-03-0440, 170-03-0450, 170-03-0460, 170-03-0470, 170-03-0480, 170-03-0490, 170-03-0500, 170-03-0510, 170-03-0520, 170-03-0530, 170-03-0540, 170-03-0550, 170-03-0560, 170-03-0570, 170-03-0580, 170-03-0590, 170-03-0600, 170-03-0610, 170-03-0620, 170-03-0630, 170-03-0640, 170-03-0650,170-03-0660, 110-15-2401, 110-15-2410, 110-15-2420, 110-15-2426, 110-15-2430, 110-15-2435, 110-15-2440, 110-15-2445, 110-15-2450, 110-15-2455, 110-15-2460, and 110-15-2465.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 20-05-025 on February 27 [7], 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 73.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 26, 2020.

Brenda Villarreal
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-15-2401	Eligible consumers.
WAC 110-15-2410	Application for early head start-child care partnership slots.
WAC 110-15-2420	Copay for early head start-child care partnership slots.
WAC 110-15-2426	Eligibility period for early head start-child care partnership slots.
WAC 110-15-2430	Eligible early head start-child care partnership slots providers.
WAC 110-15-2435	Subsidy payments for early head start-child care partnership slots providers.
WAC 110-15-2440	Early achievers payments for partnership slots providers.
WAC 110-15-2445	Reapplication for early head start-child care partnership slots.
WAC 110-15-2450	Deenrollment process for early head start-child care partnership slots providers.
WAC 110-15-2455	Payment discrepancies for early head start-child care partnership slots consumers.
WAC 110-15-2460	Payment discrepancies for early head start-child care partnership slots providers.
WAC 110-15-2465	Administrative hearings for early head start-child care partnership slots.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 170-03-0010	Purpose and scope.
WAC 170-03-0020	Definitions.
WAC 170-03-0030	Computing time for meeting deadlines in the hearing process.
WAC 170-03-0040	The right to a hearing.
WAC 170-03-0050	Requesting a hearing.
WAC 170-03-0060	Filing the request for hearing.
WAC 170-03-0070	Location of office of administrative hearings.
WAC 170-03-0080	Service of notice and documents.
WAC 170-03-0090	Proof of service.
WAC 170-03-0100	Representation during the hearing process.
WAC 170-03-0110	The right to an interpreter in the hearing process.
WAC 170-03-0120	Definitions.
WAC 170-03-0130	Interpreter qualifications.
WAC 170-03-0140	Waiver of interpreter services.
WAC 170-03-0150	Requirements that apply to the use of interpreters.
WAC 170-03-0160	Requirements that apply to decisions involving limited-English-speaking parties.
WAC 170-03-0170	Notice of hearing.
WAC 170-03-0180	Prehearing conferences.
WAC 170-03-0190	Purposes of prehearing conference.
WAC 170-03-0200	Prehearing order.
WAC 170-03-0210	Assignment and challenge of assignment of administrative law judge.
WAC 170-03-0220	Rules an ALJ or review judge must apply when making a decision.
WAC 170-03-0230	Challenges to validity of DEL rules.
WAC 170-03-0240	Amendment to DEL notice or party's request for hearing.
WAC 170-03-0250	Changes of address.
WAC 170-03-0260	Continuances.
WAC 170-03-0270	Order of dismissal.
WAC 170-03-0280	Vacating an order of default or order of dismissal.
WAC 170-03-0290	Stay of DEL action.
WAC 170-03-0300	Stay of summary suspension of child care license.
WAC 170-03-0340	Conduct of hearings.
WAC 170-03-0350	Authority of the administrative law judge.
WAC 170-03-0360	Order of the hearing.

WAC 170-03-0390	Evidence.
WAC 170-03-0400	Introduction of evidence into the record.
WAC 170-03-0410	Objections to evidence.
WAC 170-03-0420	Stipulations.
WAC 170-03-0430	Exhibits.
WAC 170-03-0440	Judicial notice.
WAC 170-03-0450	Witnesses.
WAC 170-03-0460	Requiring witnesses to testify or provide documents.
WAC 170-03-0470	Serving a subpoena.
WAC 170-03-0480	Testimony.
WAC 170-03-0490	Burden of proof.
WAC 170-03-0500	Equitable estoppel.
WAC 170-03-0510	Closing the record.
WAC 170-03-0520	Timing of the ALJ's decision.
WAC 170-03-0530	Contents of the initial order.
WAC 170-03-0540	Finality of initial order.
WAC 170-03-0550	Challenges to the initial order.
WAC 170-03-0560	Correcting clerical errors in ALJ's decisions.
WAC 170-03-0570	Appeal of the initial order.
WAC 170-03-0580	Time for requesting review.
WAC 170-03-0590	Petition for review.
WAC 170-03-0600	Response to petition for review.
WAC 170-03-0610	Decision process.
WAC 170-03-0620	Authority of the review judge.
WAC 170-03-0630	Request for reconsideration.
WAC 170-03-0640	Response to a request for reconsideration.
WAC 170-03-0650	Ruling on request for reconsideration.
WAC 170-03-0660	Judicial review.

WSR 20-08-077

PERMANENT RULES

DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed March 26, 2020, 4:55 p.m., effective April 26, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Establish a partial monthly working connections and seasonal child care rate that will be paid to licensed family home child care providers for school-age children who are in care for less than five hours on a typical school day and are expected to need before- and after-school care.

Citation of Rules Affected by this Order: Amending WAC 110-12-0190, 110-15-0205, and 110-15-3770.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Adopted under notice filed as WSR 20-05-065 on February 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 26, 2020.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-08-020, filed 3/26/19, effective 4/26/19)

WAC 110-15-0190 WCCC benefit calculations. (1) The amount of care a consumer may receive is determined by ((~~DSHS~~)) DCYF at application or reapplication. Once the care is authorized, the amount will not be reduced during the eligibility period unless:

(a) The consumer requests the reduction;

(b) The care is for a school-aged child as described in subsection (3) of this section; or

(c) Incorrect information was given at application or reapplication.

(2) To determine the amount of weekly hours of care needed, ((~~DSHS~~)) DCYF reviews:

(a) The consumer's participation in approved activities and the number of hours the child attends school, including home school, which will reduce the amount of care needed.

(b) In a two parent household, the days and times approved activities overlap, and only authorize care during those overlapping times. The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.

(c) ((~~DSHS~~)) DCYF will not consider the schedule of a parent in a two parent household who is not able to care for the child.

(3) Full-time care for a family using licensed providers is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Twenty-three full-day units per month will be authorized when the child ((~~needs~~)) is in care five or more hours per day((~~;~~)).

(b) Thirty half-day units per month will be authorized when the child ((~~needs~~)) is in care less than five hours per day((~~;~~)).

(c) Forty-six half-day units per month will be authorized during the months of June, July, and August for a school-aged child who ((~~needs~~)) is in care for five or more hours ((~~of care;~~

~~(d)~~)) per day.

(4) Partial-day monthly unit. A single partial-day monthly unit per month will be authorized for a school-age child attending a licensed family home child care when the child is:

(a) Authorized for care with only one provider; and

(b) Eligible for full-time authorization, but is in care less than five hours on a typical school day; and

(c) Expected to need care before and after school.

(d) Only one monthly unit may be authorized per child per month.

(5) Supervisor approval is required for additional days of care that exceeds twenty-three full days ((~~or~~)), thirty half days, or one partial-day monthly unit per month((~~; and~~

~~(e) Care cannot exceed sixteen hours per day, per child.~~

~~(4)~~)).

(6) Full-time care for a family using in-home/relative providers (family, friends and neighbors) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care will be authorized when the child ((~~needs~~)) is in care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized when the child ((~~needs~~)) is in care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who ((~~needs~~)) is in care less than five hours per day and the provider will be authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who ((~~needs~~)) is in care five or more hours in a day; and

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month((~~; and~~

~~(f)~~)).

(7) Care cannot exceed sixteen hours per day, per child.

((~~(5)~~)) (8) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month:

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

((~~(6)~~)) (9) When determining part-time care for a family using in-home/relative providers:

(a) Under the provisions of subsection (2) of this section, ((~~DSHS~~)) DCYF will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

((~~(7) DSHS~~)) (10) DCYF determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

((~~(8) DSHS~~)) (11) DCYF may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC 110-15-0125, or an approved in-home/relative provider under WAC 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

((~~(9)~~)) (12) Other fees ((~~DSHS~~)) DCYF may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider ((~~who has a written policy to charge all families,~~)) when care is expected to exceed ten hours in a day; and

(e) Special needs rates for a child.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

WAC 110-15-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DCYF pays the lesser of the following to a licensed or certified family home child care provider:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy daily rate for that child as listed in the following table effective July 1, 2019:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$31.25	$31.25	$26.79	$25.89	$22.32
	Half-Day	$15.63	$15.63	$13.39	$12.95	$11.16
Spokane	Full-Day	$32.59	$32.59	$27.68	$26.79	$26.79
County	Half-Day	$16.29	$16.29	$13.84	$13.39	$13.39
Region 2	Full-Day	$32.14	$32.14	$29.46	$26.79	$25.00
	Half-Day	$16.07	$16.07	$14.73	$13.39	$12.50

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 3	Full-Day	$42.86	$42.86	$37.50	$36.25	$29.38
	Half-Day	$21.43	$21.43	$18.75	$18.13	$14.69
Region 4	Full-Day	$54.37	$54.37	$48.70	$41.07	$32.31
	Half-Day	$27.19	$27.19	$24.35	$20.54	$16.16
Region 5	Full-Day	$37.07	$37.07	$34.90	$31.25	$26.79
	Half-Day	$18.54	$18.54	$17.45	$15.63	$13.39
Region 6	Full-Day	$33.93	$33.93	$31.25	$28.41	$25.89
	Half-Day	$16.96	$16.96	$15.63	$14.20	$12.95

(c) The maximum child care subsidy daily rate for that child as listed in the following table beginning July 1, 2020:

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	$33.13	$33.13	$28.39	$27.45	$23.66
	Half-Day	$16.56	$16.56	$14.20	$13.72	$11.83
Spokane	Full-Day	$34.54	$34.54	$29.34	$28.39	$28.39
County	Half-Day	$17.27	$17.27	$14.67	$14.20	$14.20
Region 2	Full-Day	$34.07	$34.07	$31.23	$28.39	$26.50
	Half-Day	$17.04	$17.04	$15.62	$14.20	$13.25
Region 3	Full-Day	$45.43	$45.43	$39.75	$38.43	$31.14
	Half-Day	$22.71	$22.71	$19.88	$19.21	$15.57
Region 4	Full-Day	$57.63	$57.63	$51.62	$43.54	$34.25
	Half-Day	$28.82	$28.82	$25.81	$21.77	$17.13
Region 5	Full-Day	$39.29	$39.29	$37.00	$33.13	$28.39
	Half-Day	$19.65	$19.65	$18.50	$16.56	$14.20
Region 6	Full-Day	$35.96	$35.96	$33.13	$30.11	$27.45
	Half-Day	$17.98	$17.98	$16.56	$15.06	$13.72

(2) Effective July 1, 2019, ((~~the half-day rate is increased for~~)) family home providers in all regions and for all ages ((~~to~~)) will receive a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session ((~~shall~~)) begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session ((~~shall~~)) begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) The family home provider is not entitled to payment at the full-day rate((~~; and~~

~~(c)~~)).

(d) In no event ((~~shall~~)) will a child care provider be entitled to two partial-day rates totaling one hundred fifty percent of the daily rate.

(3) ((~~The family home child care WAC 110-300B-0010 and 110-300B-5550~~)) A single partial-day monthly unit will be authorized for a school-age child who attends a licensed family home child care and is:

(a) Eligible for a full-time authorization, but is in care for less than five hours on a typical school day;

(b) Authorized for care with only one provider; and

(c) Expected to need care before and after school.

Partial-Day Monthly Rates					
	July 1, 2019-June 30, 2020			July 1, 2020-June 30, 2021	
	September-June monthly rate	July-August monthly rate		September-June monthly rate	July-August monthly rate
Region 1	$396.18	$491.04		$420.05	$520.52

Spokane	$475.48	$589.38		$503.88	$624.58
Region 2	$443.75	$550.00		$470.46	$583.00
Region 3	$521.58	$646.36		$552.82	$685.08
Region 4	$573.63	$710.82		$607.98	$753.50
Region 5	$475.48	$589.38		$503.88	$624.58
Region 6	$459.59	$569.58		$487.11	$603.90

(4) The monthly unit will be prorated for partial months of authorization.

(5) WAC 110-300-0355 allows providers to care for children from birth up to and including the end of their eligibility period after their thirteenth birthday. ((~~WAC 110-300B-0010 and 110-300B-5550 are superseded by WAC 110-300-0005 and 110-300-0355, respectively, effective August 1, 2019.~~

~~(4)~~)) (6) If the family home provider cares for a child who is thirteen years of age or older, the provider must follow WAC ((~~110-300B-0050 and 110-300B-5625~~)) 110-300-0300 and 110-300-0355. A child who is thirteen years of age or older at application must meet the special needs requirement according to WAC 110-15-0220. If the provider has an exception to care for a child who has reached the child's thirteenth birthday, the payment rate is the same as subsection (1) of this section and the five through twelve year age range column is used for comparison. ((~~WAC 110-300B-0050 and 110-300B-5625 are superseded by WAC 110-300-0300 and 110-300-0355, respectively, effective August 1, 2019.~~

~~(5)~~)) (7) DCYF pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection ((~~(6)~~)) (8) of this section).

((~~(6)~~)) (8) DCYF cannot pay family home child care providers to provide care for children in their care if the provider is:

(a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3770 Authorized SCC payments. The SCC program may authorize payments to licensed or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC ((~~170-290-0200 and 170-290-0205~~)) 110-15-0200 and 110-15-0205:

(a) A full day of child care when a consumer's children need care for five to ten hours per day;

(b) A half day of child care when a consumer's children need care for less than five hours per day;

(c) Full-time care when the consumer participates in one hundred ten hours or more of approved activities per calendar month based on the consumer's approved activity schedule. Full-time care means twenty-three full day units if the child needs five or more hours of care per day or thirty half-day units if the child needs fewer than five hours of care per day;

((~~(d) Beginning September 1, 2016, for school-aged children, DSHS will authorize and pay for child care as follows:~~

~~(i) DSHS will automatically increase half-day authorizations to full-day authorizations beginning the month of June when the child needs full-day care; and~~

~~(ii) DSHS will automatically decrease full-day authorizations to half-day authorizations beginning the month of September unless the child continues to need full-day care during the school year, until the following June. DSHS will send the consumer notification of the decrease as stated in WAC 170-290-0025. If the consumer's schedule has changed and the child continues to need full-day care during the school year, the consumer must request the increase and verify the need for full-day care.~~))

(2) Family home providers in all regions and for all ages will receive a partial-day rate that is seventy-five percent of the full-day rate when:

(a) The family home provider provides child care services for the child during a morning session and an afternoon session. A morning session begins at any time after 12:00 a.m. and ends before 12:00 p.m. An afternoon session begins at any time after 12:00 p.m. and ends before 12:00 a.m.;

(b) The child is absent from care in order to attend school or preschool; and

(c) The family home provider is not entitled to payment at the full day rate.

(d) In no event will a child care provider be entitled to two partial day rates totaling one hundred fifty percent of the daily rate.

(3) A single partial-day monthly unit will be authorized for a school-age child who is:

(a) Eligible for a full-time authorization, but is in care for less than five hours on a typical school day;

(b) Authorized for care with only one provider;

(c) Expected to need care before and after school.

(4) The monthly unit will be prorated for partial months of authorization.

(5) A registration fee, according to WAC ((~~170-290-0245~~)) 110-15-0245;

((~~(3) Subsidy rates for five-year-old children according to WAC 170-290-0185;~~

~~(4)~~)) (6) The field trip/quality enhancement fees in WAC ((~~170-290-0247~~)) 110-15-0247;

((~~(5)~~)) (7) The nonstandard hours bonus in WAC ((~~170-290-0249~~)) 110-15-0249; and

((~~(6)~~)) (8) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC ((~~170-290-0220, 170-290-0225, and 170-290-0230~~)) 110-15-0220, 110-15-0225, and 110-15-0230.

WSR 20-08-079
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed March 27, 2020, 9:39 a.m., effective April 27, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising this rule to correct a typographical error in a WAC reference. WAC 182-512-0250(2) refers to WAC 182-506-0010. It should refer to WAC 182-506-0015. The agency is also removing the abbreviation WAH. The agency does not abbreviate Washington Apple Health.

Citation of Rules Affected by this Order: Amending WAC 182-512-0250.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-03-075 on January 10, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 27, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-07-064, filed 3/16/15, effective 4/16/15)

WAC 182-512-0250 SSI-related medical—Ownership and availability of resources. (1) The agency considers personal and real property to be available to a Washington apple health (((~~(WAH)~~))) applicant or recipient if the applicant or recipient:

(a) Owns the property;

(b) Has the authority to convert the property into cash;

(c) Can expect to convert the property to cash within twenty working days; and

(d) May legally use the property for his or her support.

(2) The agency counts the resources of financially responsible persons (as defined in WAC ((~~182-506-0010~~)) 182-506-0015) who live in the home even if those persons do not receive ((~~WAH~~)) Washington apple health coverage.

(3) For long-term care (LTC) services, cash and other resources transferred by a ((~~WAH~~)) Washington apple health applicant or recipient or his or her spouse to another to pay for the ((~~WAH~~)) Washington apple health applicant or recipient's LTC services are considered resources available to the applicant or recipient unless otherwise excluded in this chapter, chapter 182-513 WAC, or chapter 182-516 WAC.

(4) A resource is considered available on the first day of the month following the month of receipt unless a rule about a specific type of resource provides for a different time period.

(5) A resource that ordinarily cannot be converted to cash within twenty working days is considered unavailable as long as a reasonable effort is being made to convert the resource to cash.

(6) A person may provide evidence showing that a resource is unavailable. A resource is not counted if the person shows sufficient evidence that the resource is unavailable.

(7) We do not count the resources of victims of family violence, as defined in WAC 388-452-0010, when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the person at risk of harm.

(8) The value of a resource is its fair market value minus encumbrances.

(9) Refer to WAC 182-512-0260 to consider additional resources when an alien has a sponsor.

WSR 20-08-080
PERMANENT RULES
WASHINGTON STATE PATROL
[Filed March 27, 2020, 9:57 a.m., effective April 27, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state patrol has proposed amendments to WAC 204-91A-120 Business office hours and records, and 204-91A-140 Fees. The purpose of the proposal is to clarify existing language with the passage of SHB 1218 (2017), the bill changed the starting time for calculation of storage fees and the time is charged in fifteen minute increments and may not exceed an hour.

Citation of Rules Affected by this Order: Amending WAC 204-91A-120 and 204-91A-140.

Statutory Authority for Adoption: RCW 46.55.115, 46.55.063.

Adopted under notice filed as WSR 20-03-145 on January 20, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 204-91A-120 (5)(d) removed "Time tow truck arrived at the scene" and WAC 204-91A-120 (5)(e) removed "Time tow truck departed the scene."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 26, 2020.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 15-19-105, filed 9/18/15, effective 10/19/15)

WAC 204-91A-120 Business office hours and records. (1) Business hours will be in accordance with RCW 46.55.060(6). Businesses that close for an hour between 11:00 a.m. and 1:00 p.m. must:

(a) Designate the hour that they intend to use on a daily basis and notify the patrol of the designated hour annually at the time of inspection. The designated hour may be:

(i) Changed by providing notice to the patrol at least seventy-two hours in advance. Electronic notification to the inspector will be considered an acceptable form of providing notice.

(ii) Adjusted the same day if a customer transaction occurs during the designated hour or an emergent business need arises provided that:

(A) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(B) The total amount of time the business office is closed does not exceed one hour; and

(C) Notice is provided:

(I) At the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(II) To the inspector electronically within twenty-four hours if adjusted for an emergent business need.

(b) Notify the public of the designated hour that they intend to be closed, which must be posted on the door with a telephone number at which personnel can be reached as required by RCW 46.55.060.

(c) Remain accessible to law enforcement or department of licensing if they are in the process of performing an inspection or investigation. Adjustments to the designated hour may be made if an investigation or inspection occurs during the designated hour provided that:

(i) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(ii) Notice is provided at the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(iii) The total amount of time the business office is closed does not exceed one hour.

(2) The owner/operator must have personnel at the place of business during business hours to answer phone calls and to release vehicles and personal property. Persons from adjoining or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours.

(3) When ((~~an~~)) a tow operator is not open for business and does not have personnel present at the place of business, the tow operator must post a clearly visible telephone number at the business location to advise the public how to make contact for the release of vehicles or personal property.

(4) The owner/operator must maintain personnel who must be:

(a) Available twenty-four hours a day to release impounded vehicles within a sixty-minute period of time. If personnel are contacted during the hour the business has designated to be closed under subsection (1) of this section, personnel must:

(i) Log the time of the call;

(ii) Return to the business within no more than one-half hour;

(iii) Calculate the storage fees based on the time of the call. If the vehicle's legal or registered owner or the owner's authorized representative does not redeem the vehicle at the time the tow operator returns to the business, the vehicle storage fees will accrue as if charges had not ceased at the time of the call.

(b) Identifiable as representing the company.

(5) All billing invoices must be numbered and must contain the following information:

(a) Business name, business address, and phone number.

(b) Date of service and tow truck ((~~operator's~~)) driver's first initial and last name.

(((~~b~~))) (c) Time of departure in response to the call.

(((~~c~~))) (d) Time tow truck arrived at the yard.

(e) Time ((~~service~~)) the vehicle is unloaded and the necessary and required paperwork is completed.

(((~~d~~))) (f) Class of tow truck used.

(((~~e~~))) (g) If the ((~~towing call is for~~)) tow was in response to a Washington state patrol request((~~, another police agency, a private impound, or the result of a private citizen request.~~

~~(f) All fees for service must be itemized~~)).

(((~~g~~))) (h) The date and time the vehicle was released.

(((~~6~~))) (i) The number of storage spaces used, and if more than one storage space is used, the size of vehicle as measured in feet from front bumper to rear bumper.

(6) All fees for service must be itemized on the invoice, including each item of additional labor, ancillary equipment, or removal of debris, cargo, or other items.

(7) Yard cards containing the information in subsection (5) of this section may be used for internal control of vehicles by the tow operator until the vehicle is released, sold, or otherwise disposed of. Yard cards are supplemental to, and do not replace the invoice required above.

(((~~7~~))) (8) A copy of the invoice must be filed by invoice number at the business location and a copy of any voided invoice must be retained in this same file. Another copy of the invoice must be included with the transaction file items identified in RCW 46.55.150.

AMENDATORY SECTION (Amending WSR 14-17-104, filed 8/19/14, effective 9/19/14)

WAC 204-91A-140 Fees. (1) Towing fees must be based on a flat, hourly rate only and will apply without regard to the hour of day, day of the week or whether the service was

performed on a Saturday, Sunday, or state recognized holiday. The hourly rate for each class of truck must be charged for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or state recognized holidays, if different from the hourly rate, must be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

The tow inspector will investigate allegations of overcharging. Intentional overcharging or a pattern of overcharging will be cause for suspension. The tow operator's failure to reimburse the aggrieved customer(s) may be cause for suspension, after a tow inspector has determined that overcharging occurred and may result in the suspension or revocation of the tow operators letter of appointment. The suspension will remain in effect until the tow operator has presented to the patrol sufficient proof that the aggrieved customer(s) has been fully reimbursed.

(2) The chief or designee will, prior to October 15th of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates will be determined after consultation with members of the towing industry, review of current private towing rates, and such other economic factors as the chief deems appropriate.

When signed by the chief or designee and the tow operator, a contractual agreement to charge no more than the maximum rates will become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate must:

(a) Apply when a call for a tow is made by the state patrol, except as outlined under subsection (6) of this section. This includes, but may not be limited to, collisions and impound requests.

(b) Include all ancillary activities including, but not limited to, removal of glass, debris, and vehicle fluids less than one gallon from the roadway and areas referred to as the "scene or incident location," necessary winching, dolly service, drive line removal, installation of chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement and standby time. Before leaving any collision or incident location, the tow company must advise the department of transportation, the patrol, local law enforcement road department of all fluid spills greater than one gallon remaining.

(c) Include the labor of one person per truck. When responding with a class "C" or an S-1 rotator truck to a major collision or incident location; a second person is allowed at the hourly labor rate per contract for an extra registered tow truck operator employee. Any charges for additional labor or ancillary vehicles, or both, or for removing debris, cargo, or other items at the collision or incident location must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene, and must have documentation in the vehicle transaction file for inspection purposes. Documentation must include:

(i) The first and last name of the person who requested the additional labor, ancillary vehicle, or removal of debris, cargo, or other items at the collision or incident location.

(ii) How and when the approval was obtained.

(d) Be computed from the actual time the truck departs in response to a call until the truck returns to its tow zone, responds to another call, returns to the storage area, or returns to the place of business of the registered tow truck operator. Billing invoices must have the time of day and date a vehicle arrives at the storage area or place of business of the registered tow truck operator.

(i) The hourly rate must be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes. ((~~The operator may charge the hourly rate for the first hour or any fifteen minute portion thereof.~~))

(ii) After returning to the storage area, the tow operator may charge for the total amount of time in fifteen minute increments not to exceed a total of sixty minutes.

(e) Be evenly divided between customer vehicles transported when class "E" trucks are used for multiple towing/recovery services (one on bed, one in tow) from the same service call or incident location.

(3) The basic storage fee:

(a) Must be calculated using bumper to bumper measurements for vehicles, and using tongue to bumper measurements for trailers; and

(b) Must be calculated on a twenty-four-hour basis and must be charged to the nearest half day from the time the vehicle arrives at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour period may be charged a full day's storage. Vehicles stored less than twelve hours on any given day, may only be charged for twelve hours of storage; and

(c) Must be the same for all three and four-wheel vehicles twenty feet or less in length; and

(d) For vehicles or combinations exceeding twenty feet, the storage fee must be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee; and

(e) For motorcycles, operators may charge the basic storage fee for vehicles.

(4) To charge fees for ancillary equipment, additional labor, or removal of cargo and commodities that must be offloaded after placed in the storage area or registered tow truck operator's place of business for the purpose of disposal or storage, the operator must provide written notification of such fees to the legal owner, registered owner or owner's agent of the vehicle and must make a good faith attempt to gain prior authorization for estimated charges.

(a) Notification must include an itemized list of the estimated charges for any ancillary equipment, additional labor, or removal of cargo and commodities that must be offloaded after placed in the storage area or registered tow truck operator's place of business for the purpose of disposal or storage.

(b) Documentation must include:

(i) A copy of the written notification made to the legal owner, registered owner, or owner's agent.

(ii) Full name of the individual(s) contacted or attempted to be contacted for authorization for completion of additional

labor, ancillary equipment, or removal of cargo or commodities for the purpose of disposal or storage.

(iii) The company representing the legal owner, registered owner, or owner's agent if applicable.

(iv) Date and time of each contact.

(v) Phone number and any other contact information that was available at the time of the contact.

(c) The patrol will provide the insurance information by request of the operator, if available.

(5) After hours release fee may be assessed if the tow operator or employee must be at the business location specifically for the purpose of releasing the vehicle and/or property on any weekday after 5 p.m. and before 8 a.m.; Saturday or Sunday; or on any state recognized holiday. After hour fees must:

(a) Be based on a flat, hourly rate;

(b) Be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes; and

(c) Be no more than one-half of the class "A" rate.

(6)(a) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for the following services must charge the same lower rate for similar services performed as a result of patrol initiated calls:

(i) Roadside mechanical service including, but are not limited to, fuel transfer, tire and belt changes;

(ii) Disabled vehicle tow/transportation;

(iii) Storage;

(iv) After hours release fees.

(b) The price requirement in subsection (a)(i) through (iii) of this section does not apply to unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

(7) Upon redemption of a vehicle, an additional charge may not be assessed for moving or relocating any stored vehicle from inside a tow operator's storage yard to the front of the business establishment.

(8) Tolls and ferry fares paid by the tow operator or employee as a result of charges attributed to services provided during travel to and from a service call while using the shortest reasonable route, may be added as a separate line item to the tow bill. Added charges must be evidenced by a receipt or highlighted (i.e., "Good to Go" or "Wave to Go") on the transaction document and kept in the vehicle transaction file for inspection purposes.

WSR 20-08-082
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed March 27, 2020, 11:35 a.m., effective April 27, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is correcting typographical errors in WAC 182-513-1380 (2)(d), 182-515-1509 (4)(b), and 182-515-1514 (4)(b). The WAC citations listed as "WAC 182-513-1505 through 182-513-1525" should be "chapter 388-79A WAC."

Citation of Rules Affected by this Order: Amending WAC 182-513-1380, 182-515-1509, and 182-515-1514.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-03-076 on January 10, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: March 27, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution. This rule describes how the agency or the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees and administrative costs, including any attorney fees paid by the guardian, as allowed under ((~~WAC 182-513-1505 through 182-513-1525~~)) chapter 388-79A WAC.

(3) The agency or the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized client or the client's spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client or couple is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income deduction.

(4) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A client is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a client pays only the difference up to the state rate cost of care.

(6) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has in a month.

(7) Standards under this section for long-term care are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/standards-ltc.

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living at home:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the federal poverty level (FPL) and must pay the remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(b) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives at home and apart from the client's spouse keeps a PNA of up to the FPL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services is each allowed to keep a PNA of up to the FPL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living at home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the federal poverty level (FPL) and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A Client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first $65 plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under ((~~WAC 182-513-1505 through 182-513-1525~~)) chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If

the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

AMENDATORY SECTION (Amending WSR 17-23-039, filed 11/8/17, effective 1/1/18)

WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility. (1) A client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the client is living at home, as follows:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a client must pay toward the cost of care for HCB wavier services authorized by DDA and room and board when the client is living in a department-contracted ALF defined under WAC 182-513-1100. A client:

(a) Keeps a PNA under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first $65, plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed under ((~~WAC 182-513-1505 through 182-513-1525~~)) chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources.

WSR 20-08-092
PERMANENT RULES
BATES TECHNICAL COLLEGE

[Filed March 30, 2020, 8:35 a.m., effective April 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 495A-133 WAC, College operations and information, is being amended to align with current policies and practices for Bates Technical College.

Citation of Rules Affected by this Order: Amending chapter 495A-133 WAC.

Statutory Authority for Adoption: RCW 42.30.075 and chapter 34.05 RCW.

Adopted under notice filed as WSR 20-03-030 on January 7, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 30, 2020.

Dr. Jean Hernandez
Special Assistant
to the President

Chapter 495A-133 WAC

((~~ORGANIZATION~~)) COLLEGE OPERATIONS AND INFORMATION

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-133-020 ((~~Organization—Operation—Information.~~)) College operations. (((~~(1) Organization. Bates Technical College is established in Title 28B RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.~~

~~(2) Operation.~~)) The ((~~administrative~~)) president's office is located at the following address:

Downtown Campus

1101 South Yakima Avenue
Tacoma, WA 98405

The ((~~office hours are 8:00 a.m. to 5:00 p.m.,~~)) college normally operates Monday through Friday, except legal holidays. See the college website for specific services provided by the college and office hours.

Educational programs, student support services, and general operations of the college also are ((~~also~~)) located at the downtown campus and at the following ((~~addresses~~)) locations:

South Campus
2201 South 78th Street
Tacoma, WA 98409

((~~Home and Family Life Center
5214 North Shirley Street
Tacoma, WA 98407~~

~~Business and Management Center
7030 Tacoma Mall Boulevard
Tacoma, WA 98409~~

~~(3) Information. Additional and detailed information concerning the educational offerings of the college may be obtained from the catalog, copies of which are available at the following address:~~

~~1101 South Yakima Avenue~~))
Central Campus
2320 South 19th Street
Tacoma, WA 98405

NEW SECTION

WAC 495A-133-030 Information. Additional and detailed information concerning the educational offerings and services of the college may be obtained from the catalog, college website, and at the following address:

Downtown Campus
1101 South Yakima Avenue
Tacoma, WA 98405

WSR 20-08-095
PERMANENT RULES
GAMBLING COMMISSION

[Filed March 30, 2020, 11:04 a.m., effective April 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In 2017-2018, the gambling commission amended its rules to simplify its reporting and licensing fee structure. After a year of implementation, rule amendments are needed to ensure reporting, licensing, and recordkeeping requirements align with the purpose of the original fee simplification rule making.

Citation of Rules Affected by this Order: Amending WAC 230-03-085 Denying, suspending, or revoking an application, license or permit, 230-03-265 Applying for a card room employee license, 230-05-112 Defining "gross gambling receipts," 230-05-138 Returned payments, 230-05-142 Fees for review of gambling equipment, supplies, services, or games, 230-07-090 Keeping and depositing all gambling funds separate from other funds, and 230-11-100 Recordkeeping requirements for licensees with gross gambling receipts over fifty thousand dollars in their previous license year and raffles using alternative drawing formats.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 20-03-164 on January 21, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 7, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 13, 2020.

Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit. We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) Has failed to pay a quarterly license fee or submit a quarterly license report or has failed to pay a late fee assessed as a result of failure to pay a quarterly license fee or submit a quarterly license report; or

(6) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(7) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(9) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or

(b) Criminal record; or

(c) Reputation; or

(d) Habits; or

(e) Associations; or

(10) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-265 Applying for a card room employee license. You must apply for a card room employee license:

(1) If you will be involved in the operation of a:

(a) Commercial nonhouse-banked card room((,)) charging a fee to play;

(b) Class F endorsed nonhouse-banked card room((,)); or

(c) House-banked card room; and

(2) You perform any of the following functions:

(a) Collecting fees; or

(b) Dealing; or

(c) Supervising any card game or other card room employee, such as acting as a pit boss, floor person, or section supervisor; or

(d) Selling or redeeming chips; or

(e) Performing cashier or cage duties such as counting and handling chips or cash, completing credit slips, fill slips, or inventory slips, or accounting for other card room receipts in the cage; or

(f) Observing dealers and card games to detect cheating or control functions; or

(g) Controlling card room funds including keys to secure locations; or

(h) Taking part in the operation of a card game.

(3) A Class B card room employee license is required to work at a house-banked card room and Class F endorsed non-house-banked card room.

(4) A Class A card room employee license is required to work at a nonhouse-banked card room.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-112 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of an authorized activity as described in subsection (5) of this section.

(2) The amounts must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses, such as over/short.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

(5) Gross gambling receipts for authorized activities:

Activity:	Gross gambling receipts include amounts due to any operator for:
(a) **Punch board and pull-tab**	Purchasing chances to play.
(b) **Raffles and enhanced raffles**	Purchasing chances to enter.
(c) **Bingo**	Fees or purchase of cards to participate.
(d) **Amusement games**	Amounts paid to play amusement games.
(e) **Card games**	• "Net win" from house-banked card games; • Tournament entry fees; • Administrative fees from player-supported jackpots; • Fees to participate in nonhouse-banked card games.
(f) **Manufacturers and distributors**	(i) Fees from sales, rentals, leases, royalties, and service fees collected for the following gambling equipment in Washington to include, but not limited to: • Bingo paper or bingo cards; • Punch boards and pull-tabs; • Devices for dispensing pull-tabs; • Electronic devices for conducting, facilitating or accounting for the results of gambling activities; • Cards; • Dice; • Gambling chips; • Cash exchange terminals; • Progressive meters; • Gambling software; • License agreements; • Card shuffling devices; • Graphical game layouts for table games; • Ace finders or no-peek devices; • Roulette wheels; • Keno equipment; • Tables manufactured exclusively for gambling purposes; • Bet totalizers; • Electronic devices for reading or displaying outcomes of gambling activities; • Tribal lottery systems and components thereof. (ii) Fees from the service, repair and modification of gambling equipment in Washington to include, but not limited to: • Charges for labor and parts for repairing gambling equipment; • Service fees related to gambling operations; • Training or set-up fees; • Maintenance contract fees related to gambling equipment and operations.

Activity:	Gross gambling receipts include amounts due to any operator for:
(g) **Gambling service suppliers**	Fees from gambling-related services provided in or to be used in Washington to include, but not limited to: • Consulting, advisory or management services related to gambling; • Interest from financing the purchase or lease of gambling equipment, infrastructure or facilities or equipment that supports gambling operations; • Acting as a lending agent, loan services or placement agent; • Assembly of components for gambling equipment to be used under a contract with a licensed manufacturer; • Ongoing financial arrangements for gambling related software with a licensed manufacturer; • Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; • Training individuals to conduct authorized gambling activities; • Performing testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compacts; • Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators; • Ownership of proprietary games or equipment.
(h) **Punch board/pull-tab service businesses**	Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators.
(i) **Fund-raising event distributors**	Fees from contracts to organize and conduct recreational gaming activities.
(j) **Fund-raising events and agricultural fairs**	Fees received from the operation of bingo, amusement games, raffles, lotteries, contests of chance, and/or net win from table games operated at a fund-raising event.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-138 Returned payments. (1) If your bank returns your payment to us for any reason, you must:

(a) Pay us in full, by certified check, money order, or cash, within five days of notification; and

(b) Reimburse our processing costs which would include, but not be limited to, time spent notifying you and seeking payment.

(2) If you fail to pay within five days of notification:

(a) We will administratively close your application; or

(b) Your license expires and all gambling activity must stop; or

(c) Administrative action may be taken against your license(s).

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-142 Fees for review of gambling equipment, supplies, services, or games. (1) You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review.

(2) You must pay the application deposit before we perform the review.

(3) You must also reimburse us for any additional costs of the review.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds. Charitable or nonprofit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

(a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and

(b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and

(c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and

(d) Deposit funds received from commercial amusement game operators operating amusement games on their premises in the licensee's gambling receipts account no later than the second banking day after they receive the receipts; and

(e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records

and licensees must make them available for our inspection; and

(f) Deposit all net gambling receipts which they are holding, pending pay out:

(i) From bingo, no later than the second banking day after they receive them. Licensees may withhold bingo receipts from deposits for "jar," "pig," or other special game prizes if the total of all such prize funds does not exceed two hundred dollars, enter the amount withheld each session in the bingo daily record, and record the reconciliation of the special game fund on the bingo daily record. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records; and

(ii) From raffles ((~~and amusement games~~)), at least once a week. This includes those raffles:

(A) With gross gambling receipts over fifty thousand dollars in their initial year;

(B) With gross gambling receipts over fifty thousand dollars in their previous license year((~~, at least once each week~~)); and

(C) Offering prizes that require approval per WAC 230-11-067; and

(iii) From amusement games with gross gambling receipts over fifty thousand dollars in their previous license year, at least each week; and

(((~~iii~~))) (iv) From punch board and pull-tabs, including cost recovery for merchandise prizes awarded, no later than two banking days after they remove the board or series from play; and

(g) Record the Washington state identification number assigned to the punch board or pull-tab series and the amount of net gambling receipts on the deposit slip/receipt. Licensees may record the number and the receipts on a separate record if they record the bank validation number and maintain the record with the deposit slip/receipt; and

(2) These requirements do not apply to organizations who:

(a) Conduct only one or more of the following activities:

(i) Raffles under the provisions of RCW 9.46.0315;

(ii) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(iii) Bingo, raffle, and amusement game licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year; and

(b) Do not have any other license(s) from us.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-11-100 Recordkeeping requirements for raffle licensees ((~~with gross gambling receipts over fifty thousand dollars in their previous license year and raffles using alternative drawing formats~~)). (1) Licensees conducting raffles with gross gambling receipts of fifty thousand dollars or less in their previous license year and organizations conducting unlicensed raffles under the authority of RCW 9.46.0315 or 9.46.0321 must keep a record by month of the following:

(a) Gross receipts; and

(b) Prizes paid; and

(c) Net income; and

(d) Documentation of expenses; and

(e) Documentation of how the proceeds were used.

(2) Licensees conducting raffles with gross gambling receipts over fifty thousand dollars in their initial license year, with gross gambling receipts over fifty thousand dollars in their previous license year, offering prizes that require approval per WAC 230-11-067, or conducting raffles using alternative drawing formats must prepare a detailed record for each raffle they conduct. Licensees must:

(((~~1~~))) (a) Record all data required in the standard format we provide; and

(((~~2~~))) (b) Maintain the following:

(((~~a~~))) (i) Validated deposit receipts for each deposit of raffle proceeds; and

(((~~b~~))) (ii) All winning tickets; and

(((~~c~~))) (iii) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and

(((~~d~~))) (iv) All ticket stubs for raffles that participants are not required to be present at the drawing; and

(((~~e~~))) (v) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars; and

(((~~f~~))) (vi) Invoices and other documentation recording the purchase or receipt of prizes; and

(((~~g~~))) (vii) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and

(((~~3~~))) (c) Complete all records no later than thirty days following the drawing.

WSR 20-08-097
PERMANENT RULES
GAMBLING COMMISSION

[Filed March 30, 2020, 11:09 a.m., effective April 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In 2017-2018, the gambling commission amended rules to simplify its reporting and licensing fee structure. All licensees have now completed the transition from the old reporting and licensing fee structure to the new reporting and licensing fee structure. The old reporting and licensing fee structure is now obsolete and the rules related to the old reporting and licensing fee structure can be repealed.

Citation of Rules Affected by this Order: Repealing WAC 230-05-001 Prorating or refunding fees, 230-05-005 Fees for review of gambling equipment, supplies, services or games, 230-05-010 Returned payments, 230-05-015 Two-part payment plan for license fees, 230-05-016 Exceeding license class, 230-05-017 Failing to apply for license class upgrade, 230-05-018 Partial refund of license fees if gambling receipts limit not met, 230-05-020 Charitable or nonprofit organization fees, 230-05-025 Commercial stimulant fees, 230-05-030 Fees for other businesses, 230-05-035 Individuals license fees, 230-05-102 All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter, 230-06-124 Online fil-

ing required with waivers available upon request for good cause, 230-06-150 Defining "gross gambling receipts," 230-06-170 Defining "net win," 230-07-155 Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses, 230-07-160 Reporting annual activity for agricultural fairs, 230-09-056 Activity reports for fund raising events, 230-10-331 Activity reports for Class D and above bingo prize providers, 230-10-457 Activity reports for linked bingo prize providers, 230-13-169 Annual activity reports for commercial amusement game licensees, 230-14-284 Activity reports for punch board and pull-tab licensees, 230-15-200 Reporting card game activity, 230-15-205 Card tournament licenses, 230-16-220 Activity reports by manufacturers and distributors, and 230-11-095 Recordkeeping requirements for licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year and unlicensed raffles.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 20-03-159 on January 21, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 26.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 26.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 26; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 13, 2020.

Ashlie Laydon
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-05-001	Prorating or refunding of fees.
WAC 230-05-005	Fees for review of gambling equipment, supplies, services, or games.
WAC 230-05-010	Returned payments.
WAC 230-05-015	Two-part payment plan for license fees.
WAC 230-05-016	Exceeding license class.
WAC 230-05-017	Failing to apply for license class upgrade.
WAC 230-05-018	Partial refund of license fees if gambling receipts limit not met.
WAC 230-05-020	Charitable or nonprofit organization fees.
WAC 230-05-025	Commercial stimulant fees.
WAC 230-05-030	Fees for other businesses.
WAC 230-05-035	Individuals license fees.
WAC 230-05-102	All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-06-124	Online filing required with waivers available upon request for good cause.
WAC 230-06-150	Defining "gross gambling receipts."
WAC 230-06-170	Defining "net win."

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-07-155	Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses.
WAC 230-07-160	Reporting annual activity for agricultural fairs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-09-056	Activity reports for fund-raising events.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-10-331	Activity reports for Class D and above bingo licensees.
WAC 230-10-457	Activity reports for linked bingo prize providers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-11-095	Recordkeeping requirements for licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year and unlicensed raffles.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-13-169	Annual activity reports for commercial amusement game licensees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-14-284	Activity reports for punch board and pull-tab licensees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-15-200	Reporting card game activity.
WAC 230-15-205	Card tournament licenses.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-16-220	Activity reports by manufacturers and distributors.

WSR 20-08-103
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed March 30, 2020, 2:16 p.m., effective April 30, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending these rules to align with recent dental policy changes for dental services for clients enrolled in an agency-contracted managed care organization (MCO). Beginning in January 2020, these charges became the responsibility of the client's MCO.

Citation of Rules Affected by this Order: Amending WAC 182-535-1098 and 182-535-1350.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 20-04-088 on February 5, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 30, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-09-058, filed 4/15/19, effective 7/1/19)

WAC 182-535-1098 Covered—Adjunctive general services. Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The medicaid agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC 182-535-1086 (2)(b)), for treatment of dental pain, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based deep sedation/general anesthesia services:

(i) For all eligible clients age eight and younger and clients any age of the developmental disabilities administration of the department of social and health services (DSHS). Documentation supporting the medical necessity of the anesthesia service must be in the client's record.

(ii) For clients age nine through twenty on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC 182-535-1094 (1)(f) through (m) and clients with cleft palate diagnoses, the agency does not require prior authorization for deep sedation/general anesthesia services ((~~do not require prior authorization~~)).

(iii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia is medically necessary, as defined in WAC 182-500-0070.

(d) Covers office-based intravenous moderate (conscious) sedation/analgesia:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older when prior authorized. The agency considers these services for only those clients:

(A) With medical conditions such as tremors, seizures, or asthma;

(B) Whose records contain documentation of tried and failed treatment under local anesthesia, or other less costly sedation alternatives due to behavioral health conditions; or

(C) With other conditions for which general anesthesia or conscious sedation is medically necessary, as defined in WAC 182-500-0070.

(e) Covers office-based nonintravenous conscious sedation:

(i) For any dental service for clients age twenty and younger, and for clients any age of the developmental disabilities administration of DSHS. Documentation supporting the medical necessity of the service must be in the client's record.

(ii) For clients age twenty-one and older, only when prior authorized.

(f) Requires providers to bill anesthesia services using the current dental terminology (CDT) codes listed in the agency's current published billing instructions.

(g) Requires providers to have a current anesthesia permit on file with the agency.

(h) Covers administration of nitrous oxide once per day, per client per provider.

(i) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(j) Pays for dental anesthesia services according to WAC 182-535-1350.

(k) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the agency for the services to be covered.

(2) **Professional visits.** The agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The agency limits payment to two facilities per day, per provider.

(b) One hospital visit, including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The agency limits payment to one emergency visit per day, per client, per provider.

(3) **Drugs and medicaments (pharmaceuticals).**

(a) The agency covers oral sedation medications only when prescribed and the prescription is filled at a pharmacy. The agency does not cover oral sedation medications that are dispensed in the provider's office for home use.

(b) The agency covers therapeutic parenteral drugs as follows:

(i) Includes antibiotics, steroids, anti-inflammatory drugs, or other therapeutic medications. This does not include sedative, anesthetic, or reversal agents.

(ii) Only one single-drug injection or one multiple-drug injection per date of service.

(c) For clients age twenty and younger, the agency covers other drugs and medicaments dispensed in the provider's office for home use. This includes, but is not limited to, oral antibiotics and oral analgesics. The agency does not cover the time spent writing prescriptions.

(d) For clients enrolled in an agency-contracted managed care organization (MCO), the client's MCO pays for dental prescriptions.

(4) **Miscellaneous services.** The agency covers:

(a) Behavior management provided by a dental provider or clinic. The agency does not cover assistance with managing a client's behavior provided by a dental provider or staff member delivering the client's dental treatment.

(i) Documentation supporting the need for behavior management must be in the client's record and including the following:

(A) A description of the behavior to be managed;

(B) The behavior management technique used; and

(C) The identity of the additional professional staff used to provide the behavior management.

(ii) Clients, who meet one of the following criteria and whose documented behavior requires the assistance of one additional professional staff employed by the dental provider or clinic to protect the client and the professional staff from injury while treatment is rendered, may receive behavior management:

(A) Clients age eight and younger;

(B) Clients age nine through twenty, only on a case-by-case basis and when prior authorized;

(C) Clients any age of the developmental disabilities administration of DSHS;

(D) Clients diagnosed with autism;

(E) Clients who reside in an alternate living facility (ALF) as defined in WAC 182-513-1301, or in a nursing facility as defined in WAC 182-500-0075.

(iii) Behavior management can be performed in the following settings:

(A) Clinics (including independent clinics, tribal health clinics, federally qualified health centers, rural health clinics, and public health clinics);

(B) Offices;

(C) Homes (including private homes and group homes); and

(D) Facilities (including nursing facilities and alternate living facilities).

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC 182-535-1094(3) for occlusal

orthotic device coverage and coverage limitations.) The agency covers:

(i) An occlusal guard only for clients age twelve through twenty when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

(5) **Nonclinical procedures.**

(a) The agency covers teledentistry according to the department of health, health systems quality assurance office of health professions, current guidelines, appropriate use of teledentistry, and as follows (see WAC 182-531-1730 for coverage limitations not listed in this section):

(i) Synchronous teledentistry at the distant site for clients of all ages; and

(ii) Asynchronous teledentistry at the distant site for clients of all ages.

(b) The client's record must include the following supporting documentation regarding teledentistry:

(i) Service provided via teledentistry;

(ii) Location of the client;

(iii) Location of the provider; and

(iv) Names and credentials of all persons involved in the teledentistry visit and their role in providing the service at both the originating and distant sites.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

WAC 182-535-1350 Payment methodology for dental-related services. The agency uses the description of dental services described in the American Dental Association's Current Dental Terminology (CDT), and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, the agency pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC 182-535-1100 and 182-535-1400.

(2) The agency sets maximum allowable fees for dental services as follows:

(a) The agency's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) The agency consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) The agency consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the agency's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) The agency pays eligible fee-for-service providers listed in WAC 182-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general anesthesia when the provider meets the criteria in this chapter and other applicable WAC. For clients enrolled in an agency-contracted managed care organization (MCO), the client's MCO pays for dental prescriptions.

(4) Dental hygienists who have a contract with the agency are paid at the same rate as dentists who have a contract with the agency, for services allowed under the Dental Hygienist Practice Act.

(5) Licensed denturists who have a contract with the agency are paid at the same rate as dentists who have a contract with the agency, for providing dentures and partials.

(6) The agency makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(7) The agency may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(8) The agency does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in the agency's reimbursement for comprehensive oral evaluations or limited oral evaluations.

WSR 20-08-113

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 31, 2020, 1:37 p.m., effective July 1, 2020]

Effective Date of Rule: July 1, 2020.

Purpose: The adopted rule increases fees for all large on-site sewage systems. The adopted rule increases the annual base fees from $150 to $450 in 2020 and from $450 to $608 in 2021 and the LOSS design flow fee of approved system capacity from $.01 to $.03 per gallon in 2020 and from $.03 to $.0405 per gallon in 2021. The adopted rule also includes increases on project fees and adds a late application processing fee for systems that do not submit their annual operating permit applications in a timely manner. The department of health completed an economic impact analysis that examined the large on-site sewage system program's revenues and expenses to determine the amount of the increases.

Citation of Rules Affected by this Order: Amending WAC 246-272-3000.

Statutory Authority for Adoption: RCW 43.20B.020, 43.70.110, 43.70.250, 70.118B.030.

Adopted under notice filed as WSR 20-03-108 on February 5 [January 15], 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 31, 2020.

Lauren Jenks
Assistant Secretary

AMENDATORY SECTION (Amending WSR 10-16-108, filed 8/2/10, effective 9/2/10)

WAC 246-272-3000 Large on-site sewage system fees. This section establishes fees for large on-site sewage systems (LOSS) as regulated under chapter 246-272B WAC.

(1) The following ((~~fees apply to LOSS review and inspection.~~

~~(a) The owner shall pay a nonrefundable base project review fee of eight hundred dollars at the time the project is submitted. The nonrefundable fee covers up to eight hours of review time.~~

~~(b) The owner shall pay one hundred dollars per hour for additional review time over eight hours for new construction LOSS.~~

~~(c) The owner shall pay one hundred dollars per hour for LOSS review not included in (a) or (b) of this subsection.~~

~~(d) The owner shall pay a flat rate of five hundred dollars for each presite and final inspection.~~

~~(2) The owner shall pay all outstanding fees before any department approval is granted.~~

~~(3) Operating permit fees consist of a base fee for each LOSS plus a LOSS volume fee as shown below.~~

~~Category~~	~~Base Fee~~	~~LOSS Volume Fee~~
~~Operating permit and annual renewal~~	~~$150.00~~	~~$.01 for each gallon of approved daily design flow~~

~~(4) For initial operating permits, the owner shall pay the operating permit fee at the time the application is submitted to the department.~~

~~(5) For renewal of operating permits, the owner shall pay the operating permit fee at the time the renewal application is submitted to the department.~~)) nonrefundable fees apply to engineering and environmental reviews and inspections of LOSS.

(a) New and modification project reviews. The owner shall pay a project review base fee of eight hundred forty-eight dollars at the time the project application is submitted to the department. The fee covers up to eight hours of review time. The owner shall pay one hundred six dollars per hour for additional review time over eight hours.

(b) Reduced modification project reviews. The owner may request and the department may approve a reduced project review base fee of four hundred twenty-four dollars at the time the project application is submitted to the department. The fee covers up to four hours of review time. The owner shall pay one hundred six dollars per hour for additional review time over four hours.

(c) Review of LOSS documents in response to permit conditions. The owner shall pay a fee based on one hundred six dollars per hour.

(d) Review of LOSS documents not associated with project reviews or permit conditions under (a), (b) or (c) of this subsection. The owner shall pay a fee based on one hundred six dollars per hour.

(e) Site inspections and inspections related to enforcement events. The owner shall pay a fee of one thousand dollars.

(f) Final inspections. The owner shall pay a fee of five hundred dollars.

(2) Initial operating permit and annual operating permit renewals. The owner shall pay nonrefundable operating permit fees consisting of a base fee plus a department-approved LOSS design flow fee as shown in Table A Operating Permit Fees.

Table A
Operating Permit Fees

Operating Permit Fees	Effective July 1, 2020	Effective July 1, 2021
Base fee	$450.00	$608.00
Department-approved LOSS design flow fee	$.03 per gallon	$.0405 per gallon

(3) Initial operating permits. The owner shall pay operating permit fees at the time the operating permit application is submitted to the department in accordance with WAC 246-272B-02150 and 246-272B-02200.

(4) Renewal of annual operating permits. The owner shall pay annual operating permit fees to the department at least thirty days prior to the expiration of the current operating permit in accordance with WAC 246-272B-02650.

(5) Late applications. The department will assess a ninety-four dollar late application processing fee to LOSS owners that do not submit an annual operating permit at least thirty days prior to the permit's expiration date.

(6) Outstanding fees. LOSS owners shall pay all outstanding fees under this section before the department will issue a notice to proceed, project approval, or annual operating permit.

WSR 20-08-115
PERMANENT RULES
ATTORNEY GENERAL'S OFFICE
[Filed March 31, 2020, 3:02 p.m., effective May 1, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The office of the attorney general is amending eight rules and repealing eight rules in chapter 44-06 WAC. The rules are the office's public records rules to implement office procedures with respect to requests submitted to the office under the Public Records Act (PRA) at chapter 42.56

RCW. The purpose of the amendments and repeals is to update the public records rules to current laws and office practices and technology, to make them more useful and functional for requestors and for the office. These changes will provide better and more current procedures for full public access to public records, protecting public records from damage or disorganization, preventing excessive interference with other essential functions of the agency, and providing records requestors the fullest assistance in processing their PRA requests. For example, some rules refer to chapter 42.17 RCW, the prior codification of chapter 42.56 RCW, and some refer to old procedures or former office divisions. The proposed amendments address procedures to make records requests, procedures to process requests, other new PRA requirements, statutory citations, and other topics. All the public records rules in chapter 44-06 WAC are being either amended or repealed, except for WAC 44-06-092 Copying fees—Payments, which was updated in 2018 and will remain unchanged. Some repealed language has simply been moved into other more logical rule locations.

Citation of Rules Affected by this Order: Repealing WAC 44-06-020, 44-06-040, 44-06-050, 44-06-060, 44-06-100, 44-06-130, 44-06-140 and 44-06-150; and amending WAC 44-06-010, 44-06-030, 44-06-070, 44-06-080, 44-06-085, 44-06-110, 44-06-120, and 44-06-160.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.100, 42.56.070, and 42.56.120.

Other Authority: RCW 43.10.110, 34.05.310 - 34.05. 395.

Adopted under notice filed as WSR 19-21-170 on October 23, 2019.

Changes Other than Editing from Proposed to Adopted Version: In adopting these final rules, the office made one minor insubstantial change from the proposed rule amendment at WAC 44-06-160 Requests for review, to add an office email address.

Information on comments received on the proposed amendments and the office responses is available in the concise explanatory statement, which will be made available on the office's website on the rule-making web page at http://www.atg.wa.gov/rulemaking-activity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 8.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 8.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 8.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 31, 2020.

Bob Ferguson
Attorney General

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-010 Purpose. The purpose of ((~~this chapter is to provide rules for the Washington state attorney general's office, implementing the provisions of chapter 42.17 RCW relating to public records~~)) these rules is to establish the procedures the attorney general's office (office) will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the office and establish processes for both requestors and the office staff that are designed to best assist members of the public in obtaining such access.

In carrying out its responsibilities under the Public Records Act chapter 42.56 RCW (act), the office will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-030 Function—Organization—Administrative offices—General inquiries to the office. (1) **Function, organization and administrative offices.** The ((~~attorney general's~~)) office is charged by the constitution and statutes with the general obligation of advising and legally representing the state of Washington, its officials, departments, boards, commissions and agencies but not the local units of government. In response to requests from state officers, legislators and prosecuting attorneys, the ((~~attorney general's~~)) office issues attorney general opinions. ((~~The published opinions of the attorney general's office are numbered as AGO (year of issue and number; i.e., AGO 1974 No. 1).~~)) More information about the office's roles is available on the office website at www.atg.wa.gov.

The office is organized into several divisions that provide legal advice to state agencies. Offices are located in cities across the state. The main office is in Olympia. The mailing address and phone number of the Olympia main office is:

Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100
Phone: 360-753-6200

An online form for contacting the main office is also available on the office website. More information about the Olympia main office, and offices outside the Olympia main office is on the office website.

(2) **General inquiries and correspondence unrelated to a Public Records Act request to the office.** Inquiries and correspondence concerning a matter unrelated to a Public Records Act request to the office and where a specific assistant attorney general is identified as representing a specific agency should be directed to ((~~the specifically named~~)) that assistant attorney general, if known; or the appropriate ((~~section~~)) division of the office, if known (example: Washington State University division).

((~~Consumer protection complaints should be directed to the Consumer Protection Division, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012 or to local division~~

~~offices located in Tacoma, Olympia, or Spokane. Communication concerning the New Motor Vehicles Warranty Act (the lemon law) should be directed to the Lemon Law Administration, 900 Fourth Avenue, Suite 2000, Seattle, Washington 98164-1012. Other inquiries, including requests for attorney general's opinions, should be directed to the Attorney General's Office, P.O. Box 40100, State of Washington, Olympia, Washington 98504-0100.~~

~~In addition to the areas mentioned above, the office is divided into several divisions which provide legal advice to state agencies in particular subject matter areas. Because regional office addresses may change from time to time, current division addresses and telephone numbers should be obtained from the local telephone directory or you may obtain an organizational chart and the addresses and telephone numbers of the regional offices of the attorney general by requesting it from the Attorney General's Office, P.O. Box 40100, State of Washington, Olympia, Washington 98504-0100, phone (206) 753-6200. Attorney general offices are located in other cities in the state and are denominated as regional offices.~~)) Other inquiries and correspondence concerning a matter unrelated to a Public Records Act request to the office, including where the relevant attorney, division or regional office is not known, should be sent or directed to the Olympia main office.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-070 Hours for ((~~seeking public records~~)) inspection and copying. Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-080 ((~~Requests for~~)) Public Records Act requests to the office. ((~~In accordance with requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing (or by fax or electronic mail if desired) upon a form prescribed by the office which shall be available at the offices where records are maintained. A request that is made other than upon the form prescribed by the office is permissible, but must provide the information listed in (a) through (f) of this subsection. The form shall be presented to the public records officer; or to a member of the staff designated by him or her, if the public records officer is not available, at the office during the office hours specified in WAC 44-06-070. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) If the matter requested is referenced within a current index maintained by the records officer, a reference to the requested record as it is described in such current index;~~

~~(e) If the requested matter is not identifiable by reference to a current index maintained by the office, an appropriate description of the record requested.~~

~~(f) If the request is for a list of individuals, the requester shall certify that the request is not for commercial purposes except as provided in RCW 42.17.260(7).~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.~~

~~(3) The requester may be required to provide additional information necessary to determine the application of an exemption or other law to the record(s) requested.~~)) (1) **Website records.** Persons seeking public records of the office under the act are strongly encouraged to, before submitting a records request, first review the office's website at www.atg.wa.gov. Indexed records may include formal attorney general's opinions and some orders. Those records are indexed on the website, which is updated as the opinions and orders are issued.

Another website, data.wa.gov, has data about consumer protection complaints to the office. These websites have many records about office business that are free for viewing and downloading at any time, and are accessible without making a Public Records Act request to the office.

(2) **Public Records Act requests.** Public Records Act requests to the office must be sent or submitted only to the public records officer in the Olympia main office, in one of the following ways:

Online form at http://www.atg.wa.gov/request-ago-public-records

Email: publicrecords@atg.wa.gov

U.S. Mail or Delivery:
Public Records Unit
Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100

Requestors are strongly encouraged to make requests in writing. Requestors are encouraged to use the online Public Records Act request form, which, once completed, is automatically submitted to the Olympia main office and to the attention of the public records officer. The office accepts in-person requests at the Olympia main office during normal office hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the office is closed. If the office receives an oral request, the office will reduce the request to writing and verify in writing with the requestor that it correctly memorialized the request.

Other office locations outside the Olympia main office, other office email addresses, other office fax or phone numbers, and other office staff are not authorized to accept Public Records Act requests to the office.

Communications seeking office records, but which are sent or provided to unauthorized locations, addresses or staff, will not be accepted as or processed as Public Records Act requests. The office will process such communications as general informal inquiries, general correspondence, general requests for information, or discovery, as appropriate. The requestor may resubmit his/her request to the public records officer at the Olympia main office.

This Public Records Act request procedure provides the fullest assistance to requestors by:

(a) Establishing a uniform point of contact for all Public Records Act requests to the office and related inquiries, consistent with the public records officer contact information published in the Washington State Register, and pursuant to RCW 42.56.580;

(b) Enabling the office to promptly distinguish Public Records Act requests from the high volume of other daily communications to the office on multiple topics, so as to enable appropriate responses and thereby avoid excessive interference with other essential agency functions as provided in RCW 42.56.100; and

(c) Ensuring that records requests submitted under the act are centrally reviewed during business hours by the public records officer or designee, so the office may more efficiently assign a tracking number to the request, log it in, review it, provide an initial or other response within five business days after receipt as provided in RCW 42.56.520, and otherwise timely process the request pursuant to the act and these rules.

(3) **Processing - General.** The public records officer will oversee compliance with the act but a designee may process the request. The public records officer or designee and the office will provide the fullest assistance to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office. More information about submitting public records requests to the office is in this chapter and on the office's website.

AMENDATORY SECTION (Amending WSR 98-01-013, filed 12/5/97, effective 1/5/98)

WAC 44-06-085 Response to Public Records Act requests. (1) **General.** The office shall respond promptly to requests for ((~~disclosure~~)) records made under chapter 42.56 RCW, the Public Records Act. Within five business days of receiving a Public Records ((~~request, the office will respond by:~~

~~(a) Providing the record;~~

~~(b) Acknowledging that the office has received the request and providing~~)) Act request at the main Olympia office, the office will assign the request a tracking number and log it in. The public records officer or designee will evaluate the request according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Response.** Following the initial evaluation of the request, and within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying including:

(i) If copies are available on the office's website, provide an internet address and link on the website to specific records requested;

(ii) If copies are requested and payment of a deposit for the copies, if any, is made or other terms of payment are agreed upon and satisfied, send the copies to the requestor.

(b) Acknowledge receipt of the request and provide a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available).

(c) Acknowledge receipt of the request and ask the requestor to provide clarification for a request or part of a request that is unclear, and provide, to the greatest extent possible, a reasonable estimate of ((~~the~~)) time the office will require to respond to the unclear request((~~; or~~

~~(c) Denying the public record request. Agency responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld.~~

~~(2)~~)) or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the office need not respond to it. The office will respond to those portions of a request that are clear.

(d) Deny the request.

(3) **Additional time to respond.** Additional time for the office to respond to a request may be based upon the need to((~~:~~

~~(a) Clarify the intent of~~)) clarify the request((~~;~~

~~(b)~~)), locate and assemble the ((~~information~~)) records requested((~~;~~

~~(c)~~)), notify third persons or agencies affected by the request((~~; or~~

~~(d)~~)), or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(((~~(3) In acknowledging receipt of a public record request that is unclear, the office may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request, the office need not respond to it.~~

~~(4)(a) If the office does not respond in writing within five working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:~~

~~(i) Consider the request denied; and~~

~~(ii) Petition~~)) (4)(a) **Communication encouraged.** If the requestor has not received a response in writing or has questions or concerns regarding the records request, the requestor is encouraged to contact the public records officer ((~~under WAC 44-06-120~~)).

(b) ((~~If the office responds within five working days acknowledging receipt of the request and providing~~)) **Reasonable estimate of time or costs.** The office will provide an estimate of the time required to respond to the request, and

((~~the requester feels~~)) may provide an estimate of copying costs pursuant to a specific request seeking an estimate of cost. If the requestor believes the amount of time or estimated costs stated ((~~is~~)) are not reasonable, the ((~~person seeking disclosure shall be entitled to~~)) requestor may petition the public records officer for a formal review ((~~of the estimate of time. The procedures set out in~~)) under WAC 44-06-120 ((~~shall apply to this review~~)).

(5) **Third-party notice.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure under RCW 42.56.540. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Exemptions from disclosure.** Some records are exempt from disclosure, in whole or in part. If the office believes that a record or part of a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief written explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the office shall provide space to inspect public records at a location designated by the office. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the office to copy.

(b) The requestor must claim or review the assembled records within thirty days of the office's notification to him or her that the records are available for inspection or copying. The office will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the office to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the office may close the request and refile the assembled records. Multiple public records requests from the same requestor can be processed in a manner so as not to interfere with essential agency functions including processing records requests from other requestors.

(8) **Providing copies of records.** After inspection is complete and the requestor asks for copies of some or all of the inspected records, or where copies are otherwise requested by the requestor, the public records officer or designee shall make the requested copies or arrange for copying.

(a) Where the office charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.

(b) Electronic records will be provided as a link to the records on the office's website if the records are located on the website, or in a format used by the office and which is generally commercially available. Records will generally not be provided by email, particularly for larger records responses with multiple records, or where records may not be successfully delivered or received via the office's or the requestor's email systems.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect or pay for the entire set of records or one or more of the installments, the public records officer or designee may stop searching for or producing the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the office has completed a reasonable search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request, or fails to clarify an entirely unclear request, or fails to fulfill his or her obligations to inspect the records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer or designee will close the request and, unless the agency has already indicated in previous correspondence that the request would be closed under the above circumstances, indicate to the requestor that the office has closed the request.

(12) **Later discovered documents.** If, after the office has informed the requestor that it has provided all available records, the office becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-110 Exemptions. (((~~(1) The office reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 44-06-080 is exempt under the provisions of RCW 42.17.310 or other law.~~

~~(2) Many of the records of the office are protected by the attorney-client privilege and/or the attorney work product doctrine. The office, in the course of representing agencies, may at times have materials or copies of materials from such agencies. A request for such records may be referred by the attorney general to the agencies whose records are being requested. The office may assert exemptions applicable to the agency or agencies which transmitted the material to the office.~~

~~(3) Pursuant to RCW 42.17.260, the office reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion~~

~~of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.~~

~~(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.~~)) (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. The office maintains a list of exemptions commonly applicable to its records which can be found on the office website, www.atg.wa.gov. Requestors should view this list to be aware of some of the exemptions, some of which are outside the Public Records Act, that restrict the availability of some records held by the office including, but not limited to, attorney-client privilege and work product doctrine.

(2) The office is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-120 Review of denials of public records requests, estimates of time, estimates of costs. (1) The requestor is encouraged to communicate with the public records officer or assigned designee regarding denials of public records requests, estimates of time, or estimates of costs. If the requestor remains unsatisfied, the requestor may seek formal review of the issue.

(2) Any person who objects to the office's denial or partial denial of a request for a public record, or contends an estimate of time to provide records or copying costs to provide records is not reasonable, may petition for prompt review of such decision by ((~~tendering~~)) submitting a written request for a formal internal administrative review to the public records officer.

(3) The written request for formal review shall specifically refer to the written statement by the public records officer or ((~~other staff member~~)) designee which constituted or accompanied the denial or estimate.

(((~~(2) Immediately after~~)) (4) The request for formal review is to be directed to:

Public Records Unit
Office of the Attorney General
1125 Washington Street S.E.
P.O. Box 40100
Olympia, WA 98504-0100
publicrecords@atg.wa.gov

(5) After receiving a written request for formal review of a decision denying a public record or estimate, the public records officer or ((~~other staff member~~)) designee denying the request shall refer it to the ((~~attorney general or his or her~~)) designated deputy attorney general((~~. The attorney general or his or her designee shall immediately consider the matter and either affirm or reverse such denial~~)) or public records counsel. The office will, within two business days following ((~~the~~)) receipt of ((~~the~~)) written request ((~~for review of the denial of the public record.~~

~~(3) Administrative remedies shall not be considered exhausted until the attorney general or the designated~~)), respond with an estimate of time to consider the matter. Following such review, the deputy attorney general ((~~has returned the petition with a decision or until the close of the second business day following receipt of the written request for review of the denial of the public record, whichever occurs first.~~

~~(4)~~))) or public records counsel will either affirm, reverse, or amend the denial or estimate.

(6) For purposes of WAC 44-06-160, the office shall have concluded a public record is exempt from disclosure only after the review conducted under this section has been completed.

AMENDATORY SECTION (Amending WSR 94-13-039, filed 6/6/94, effective 7/7/94)

WAC 44-06-160 Requests for review. ((~~As provided in RCW 42.17.325, "Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the~~)) A person may request ((~~the attorney general to review the matter."~~)) that the office conduct a review pursuant to RCW 42.56.530 of a state agency's denial of records requested by him or her. Requests for such review shall be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100, publicrecords@atg.wa.gov. If the state agency provides the records, the office will not issue a written opinion because the question has become moot. However, if the state agency continues to deny access to the records, the office will provide the person with a written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 44-06-020	Definitions.
WAC 44-06-040	Public records available.
WAC 44-06-050	Index.
WAC 44-06-060	Public records officer.
WAC 44-06-100	Protection of public records.
WAC 44-06-130	Consumer protection complaints.
WAC 44-06-140	Adoption of form.
WAC 44-06-150	Availability of pamphlet.

WSR 20-08-117
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed March 31, 2020, 3:33 p.m., effective October 1, 2020]

Effective Date of Rule: October 1, 2020.

Purpose: This rule making was in response to a petition by the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers received on November 20, 2018. Chapter 296-155 WAC, Part O, fell behind the newly revised 2018 - American National Standards Institute (ANSI) A10.9 (2013 and reaffirmed in 2018) standard when addressing hazards related to reinforcing steel and post-tensioning work. Labor and industries has identified and amended relevant parts of chapter 296-155 WAC, Part O to reduce employee exposure to falls, struck by things, and impalement hazards associated with collapse of formwork.

The adopted rule includes clarifying language, new definitions, explanatory notes, and other changes needed to bring current safety standards up-to-date and easy to follow for the regulated community.

Significant changes included are:

- A subsection to adopt the current requirement of fall protection at four feet or during form and rebar work; and
- A subsection regarding written notification requirements on reinforcing steel installation and concrete placement; and
- A subsection to require employers ensure that employees performing reinforcing steel and/or post-tensioning activities have been trained by a qualified person.

AMENDED SECTIONS:

WAC 296-155-675 Scope, application and definitions applicable to this part.

- Added several definitions, including controlling contractor and qualified person.

WAC 296-155-680 General provisions.

- Added language regarding site access and layout.
- Added language regarding written notifications prior to commencement of and immediately following reinforcing steel installation and concrete placement.
- Added language regarding sustainability requirements for vertical and horizontal columns, walls, and other reinforcing assemblies.
- Added language regarding impalement protection and custody.
- Added language regarding post-tensioning operations.
- Added language regarding fall protection.
- Added language regarding training requirements and retraining.

WAC 296-155-682 Requirements for equipment and tools.

- Updated references.

WAC 296-155-689 Placing and removal of forms.

- Updated references.

Citation of Rules Affected by this Order: Amending WAC 296-155-675, 296-155-680, 296-155-682, and 296-155-689.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 19-24-094 on December 3, 2019.

A final cost-benefit analysis is available by contacting Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-6081, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, website https://www.lni.wa.gov/rulemaking-activity/?query=steel.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 31, 2020.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-675 Scope, application, and definitions applicable to this part. (1) **Scope and application.** This part sets forth requirements to protect all construction employees from the hazards associated with concrete and masonry construction operations performed in workplaces covered under chapter 296-155 WAC.

(2) **Definitions applicable to this part.**

Bull float. A tool used to spread out and smooth the concrete.

Competent person. One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, who has authorization to take prompt corrective action to eliminate them.

Controlling contractor. A prime contractor, general contractor, construction manager, or any other legal entity that has the overall responsibility for the construction of the project, including planning, quality, and completion.

Dead load. A constant load, without load factors, due to the mass (weight) of members, the supported structure and permanent attachments or accessories.

Falsework. Formwork to support concrete and placing operations for supported slabs of concrete structures, including all supporting members, hardware, and bracing.

Formwork. The total system of support for freshly placed or partially cured concrete, including the mold or sheeting (form) that is in contact with the concrete as well as all supporting members including shores, reshores, hardware, braces, and related hardware.

Guy. A line that steadies a high piece or structure by pulling against an off-center load.

Jacking operation. The task of lifting a slab (or group of slabs) vertically from one location to another (e.g., from the casting location to a temporary (parked) location, or from a temporary location to another temporary location, or to its final location in the structure), during the construction of a building/structure where the lift-slab process is being used.

Lift slab. A method of concrete construction in which floor and roof slabs are cast on or at ground level and, using jacks, lifted into position.

Limited access zone. An area alongside a masonry wall, which is under construction, and which is clearly demarcated to limit access by employees.

Post-tensioning operations. A method of stressing reinforced concrete in which tendons running through the concrete are tensioned after the concrete has hardened.

Precast concrete. Concrete members (such as walls, panels, slabs, columns, and beams) which have been formed, cast, and cured prior to final placement in a structure.

Qualified. One who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated their ability to solve or resolve problems relating to the subject matter, the work, or the project.

Reinforced concrete. A composite material in which the concrete provides the material's compressive strength, while the forcing in the form of additional embedded material provides the tensile strength and/or ductility.

Reinforcing ironworker. A worker primarily engaged in the hoisting, rigging, field fabrication, moving, and installation of reinforcing steel assemblies, members, post-tensioning cables, and related equipment. Reinforcing steel activities include, but are not limited to: Off-loading and material handling of reinforcing components; fabrication, preassembly, and placement of reinforcing steel columns, beams, joists, mats, welded wire mesh, and curtain-walls; and the placement of post-tensioning cables.

Reinforcing steel assemblies. Vertical and horizontal columns, caissons, walls, drilled piers, mats, and other similar structures. For purposes of this standard, reinforcing steel includes rods, bars, or mesh made from composite and/or other materials.

Reshoring. The construction operation in which shoring equipment (also called reshores or reshoring equipment) is placed, as the original forms and shores are removed, in order to support partially cured concrete and construction loads.

Shore. A supporting member that resists a compressive force imposed by a load.

Slip form. A form that is moved as concrete is placed and slides without being detached to form walls or other concrete structures.

Stressing jacks. Portable hydraulic devices that pull the tendons associated with post-tensioning concrete to create a permanent tension load.

Tendon. A metal element, usually of steel such as wire, stranded components (such as wires), bars or rods used in prestressing or post-tensioning concrete.

Vertical slip forms. Forms which are jacked vertically during the placement of concrete.

((~~**Guy.** A line that steadies a high piece or structure by pulling against an off-center load.~~))

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-680 General provisions. (1) **General.** All equipment, material and construction techniques used in concrete construction and masonry work must meet the applicable requirements for design, construction, inspection, testing, maintenance and operations as prescribed in ANSI A10.9-1997, Concrete and Masonry Work Safety Requirements.

(2) **Construction loads.** You must not place any construction loads on a concrete structure or portion of a concrete structure unless the employer determines, based on information received from a person who is qualified in structural design, that the structure or portion of the structure is capable of supporting the loads.

(3) **Vertical loads.** Vertical loads consist of a dead load plus an allowance for live load. The weight of formwork together with the weight of freshly placed concrete is dead load. The live load consists of the weight of workers, equipment, runways and impact, and must be computed in pounds per square foot (psf) of horizontal projection.

(4) **Lateral loads.** Braces and shores must be designed to resist all foreseeable lateral loads such as wind, cable tensions, inclined supports, impact of placement, and starting and stopping of equipment. The assumed value of load due to wind, impact of concrete, and equipment acting in any direction at each floor line must not be less than 100 pounds per lineal foot of floor edge or two percent of total dead load of the floor, whichever is greater. Wall forms must be designed for a minimum wind load of 10 psf, and bracing for wall forms should be designed for a lateral load of at least 100 pounds per lineal foot of wall, applied at the top. Walls of unusual height require special consideration.

(5) **Special loads.** Formwork must be designed for all special conditions of construction likely to occur, such as unsymmetrical placement of concrete, impact of machine-delivered concrete, uplift, and concentrated loads.

(6) You must check form supports and wedges during concrete placement to prevent distortion or failure.

(7) ((~~**Reinforcing steel.**~~)) **Site access and layout.** The controlling contractor must ensure that the following is provided and maintained:

(a) Adequate access roads into and through the site for the safe delivery and movement of derricks, cranes, trucks, other necessary equipment, the material to be erected, and the means and methods for pedestrian and vehicular control.

Exception: This requirement does not apply to roads outside of the construction site.

(b) A firm, properly graded, and drained area, that is readily accessible to the work with adequate space for the safe assembly, rigging and storage of reinforcing and post-tensioning materials, and the safe operation of the reinforcing contractor's equipment.

(c) Adequate exterior platform for landing materials on the floors of multi-tiered buildings.

Exception: Where the design, structure, or space constraint precludes the installation of exterior platforms.

Exception: Where the design of the structure allows for the safe landing of materials without the exterior platform.

(d) Adequate protective system designed and constructed in accordance with Chapter 155 Part N Excavation, Trenching, and Shoring prior to the commencement of reinforcing operations in excavations and/or trenches.

(8) **Written notifications prior to commencement of and immediately following reinforcing steel installation and concrete placement.**

The controlling contractor must ensure that the reinforcing steel contractor on the project is provided with the following written notifications at the times indicated:

(a) Prior to commencement of reinforcing steel installation, that formwork and falsework has been inspected by a competent person and determined to meet the design requirements of the installing formwork/falsework contractor as indicated in (b) and (c) of this subsection and immediately after the installation of reinforcing steel and placement of the concrete.

(b) Prior to commencement of reinforcing steel installation, that the vertical formwork, elevated decks, and other working/walking surfaces are structurally stable and remain adequately braced, guyed, or supported to allow safe access of reinforcing workers, materials, and equipment.

(c) Prior to commencement of reinforcing steel installation, that the protective system for excavations and/or trenches has been inspected by a competent person.

(9) **Sustainability requirements for vertical and horizontal columns, walls, and other reinforcing assemblies.**

(a) Reinforcing steel for walls, piers, columns, prefabricated reinforcing steel assemblies, and similar vertical structures must be guyed, braced, or supported to prevent collapse.

(b) Guys, braces, or supports.

(i) Systems for guying, bracing, or supports must be designed by a qualified person.

(ii) Guys, braces, and supports must be installed and removed as directed by a competent person.

(c) Reinforcing steel must not be used as a guy or brace.

(d) The controlling contractor must prohibit other construction processes below or near the erection of reinforcement assemblies until they are adequately supported and/or secured to prevent structural collapse.

(e) The reinforcing steel contractor must flag specific areas of the erection level for their work activity. The guying and/or bracing must be in place before the release of the reinforcing assembly from the hoist rigging.

(10) **Impalement protection and custody.**

(a) You must guard all protruding reinforcing steel, onto and into which employees could fall, to eliminate the hazard of impalement.

(b) Wire mesh rolls: You must secure wire mesh rolls at each end to prevent dangerous recoiling action.

(c) ((~~Guying: You must guy or support reinforcing steel for walls, piers, columns, and similar vertical structures to prevent overturning and to prevent collapse.~~

~~(8) **Post-tensioning operations.**~~

~~(a) You must not permit any employee (except those essential to the post-tensioning operations) to be behind the jack during tensioning operations.~~

~~(b) You must erect signs and barriers to limit employee access to the post-tensioning area during tensioning operations.~~

~~(c)~~)) When protective covers are provided by the reinforcing steel contractor, the protective covers must remain in place after reinforcing steel activities have been completed to protect workers from other trades only if the controlling contractor or its authorized representative:

(i) Had directed the reinforcing steel contractor to leave the protective covers in place; and

(ii) Has inspected and accepted control and responsibility for the protective covers; or

(iii) Has placed control and responsibility for the protective covers on another contractor other than the reinforcing steel contractor.

Note: The responsibilities of the controlling contractor related to accepting the control and custody of protective covers does not relieve the individual employer or subcontractor from protecting their employees from impalement hazards in accordance with the provisions of this subsection.

(11) **Post-tensioning operations.** The controlling contractor must:

(a) Provide written documentation to the employer performing the stressing operation that the minimum specified initial concrete compressive strength has been achieved prior to commencement of stressing operations.

(b) Ensure no employees (except those essential to the post-tensioning operations) are permitted to be behind the jack or the fixed end anchorage during tensioning operations. No employees are permitted above or alongside the full length of the tendons during tensioning operations.

(c) Ensure signs and barricades are erected to limit access into the stressing area only to personnel engaged in stressing or de-tensioning operations.

(d) Prohibit other construction trades from working in the barricaded area during stressing operations.

(e) Ensure there is an adequate safe work platform of a minimum of three feet measured from the end of the floor slab to the platform toeboard, such as an extension of the formwork, for stressing tendons, cutting tendon tails, and grouting where tensioning operations are above grade.

Exception: Where the adjoining structure or other structural space constraint precludes the installation of exterior platforms.

(i) The work platform required in (e) of this subsection must include guardrails and toeboards meeting the requirements of WAC 296-880-40005; and

(ii) The work platform required in (e) of this subsection must be kept clear of any debris or materials not related to the stressing or de-tensioning operation.

(f) Ensure stressing equipment is secured to prevent accidental displacement during operation.

(g) Ensure stressing equipment calibrations specifications are available on site. Prior to stressing, a competent person must verify the adequacy of the stressing equipment calibrations.

(h) Ensure a competent person inspects the stressing equipment for damage or defects before stressing operations begin, and periodically during the stressing operations. The use of stressing equipment must conform to the manufacturer's instructions and recommendations.

(i) Ensure methods are employed to ensure that supporting forms, falsework or shoring does not fall due to cambering of the concrete during the stressing operations. Dead loads and construction loads (including those due to stressing) must be considered in the design of the forms, falsework, and shoring.

(12) **Hoisting of stressed members.**

(a) You must handle stressed members at pick points specifically designated ((~~on the manufacturer's drawings~~)) by the manufacturer.

(((~~(d)~~))) (b) You must lift stressed members with lifting devices recommended by the manufacturer or the engineer in charge.

(((~~(e) You must not allow anyone~~)) (c) No one shall be allowed under stressed members during lifting and erecting.

(((~~(9)~~))) (13) **Working under loads.**

(a) You must not permit any employee to work under concrete buckets while buckets are being elevated or lowered into position.

(b) To the extent practical, you must route elevated concrete buckets so that no employee, or the fewest number of employees, are exposed to the hazards associated with falling concrete buckets.

(((~~(10)~~))) (c) Reinforcing assemblies:

(i) Routes for suspended loads must be preplanned to ensure that no employee is required to work directly below a suspended load except for:

(A) Employees engaged in the placing or initial connection of the reinforcement assemblies; and

(B) Employees necessary for the hooking or unhooking of the load.

(ii) When working under suspended loads, the following criteria must be met:

(A) Materials being hoisted must be rigged to prevent unintentional displacement;

(B) Hooks with self-closing safety latches or their equivalent must be used to prevent components from slipping out of the hook; and

(C) The controlling contractor must prohibit all activities under or in the hazard area of hoisting operations, including unloading and staging areas for reinforcing assemblies.

(14) **Personal protective equipment.**

(a) You must not permit any employee to apply a cement, sand, and water mixture through a pneumatic hose unless the employee is wearing protective head and face equipment.

(b) ((~~You must not permit any employee to place or tie reinforcing steel more than 6 feet (1.8 m) above any adjacent working surface unless the employee is protected by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.~~

~~(c) You must protect each employee on the face of formwork or reinforcing steel from falling 6 feet (1.8 m) or more to lower levels by personal fall arrest systems, safety net systems, or positioning device systems meeting the criteria of chapter 296-155 WAC, Part C-1.~~)) Fall protection must be provided at four feet or more in accordance with WAC 296-880-20005(6).

(15) **Training requirements.**

Employers must ensure that each employee who performs reinforcing steel and/or post-tensioning activities has been provided training by a qualified person in the following areas for the activities in which they are engaged:

(a) The hazards associated with reinforcing steel and post-tensioning activities; and

(b) The proper procedures and equipment to perform reinforcing steel and post-tensioning activities.

(16) **Retraining.**

When the employer has reason to believe that any employee who has already been trained does not have the understanding or skill required by subsection (15) of this section, you must retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(a) Changes in the workplace render previous training obsolete; or

(b) Changes in the types of systems or equipment to be used render previous training obsolete; or

(c) Inadequacies in an employee's knowledge of procedures or use of equipment indicate that the employee has not retained the requisite understanding or skill.

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-682 Requirements for equipment and tools. (1) **Bulk cement storage.** Bulk storage bins, containers, and silos must be equipped with the following:

(a) Conical or tapered bottoms; and

(b) Mechanical or pneumatic means of starting the flow of material.

(2) You must not permit any employee to enter storage facilities unless the ejection system has been shut down and locked out in accordance with WAC 296-155-429.

(3) You must use harnesses, lanyards, lifelines or droplines, independently attached or attended, as prescribed in chapter ((~~296-155 WAC, Part C-1, Fall protection requirements for construction~~)) 296-880 WAC, Unified fall protection.

(4) **Concrete mixers.** Concrete mixers with one cubic yard (.8 m3) or larger loading skips must be equipped with the following:

(a) A mechanical device to clear the skip of materials; and

(b) Guardrails installed on each side of the skip.

(5) **Power concrete trowels.** Powered and rotating type concrete troweling machines that are manually guided must be equipped with a control switch that will automatically shut

off the power whenever the hands of the operator are removed from the equipment handles.

(6) **Concrete buggies.** Concrete buggy handles must not extend beyond the wheels on either side of the buggy.

Note: Installation of knuckle guards on buggy handles is recommended.

(7) **Runways.**

(a) Runways must be constructed to carry the maximum contemplated load with a safety factor of 4, have a smooth running surface, and be of sufficient width for two buggies to pass. Single runs to have a minimum width of 42 inches with turnouts. Runways to have standard railings. Where motor driven concrete buggies are used, a minimum 4-inches by 4-inches wheel guard must be securely fastened to outside edge of runways.

(b) All concrete buggy runways which are 12 inches or more above a work surface or floor, or ramps with more than 4 percent incline are considered "elevated" runways.

Exception: Small jobs utilizing only one concrete buggy, or larger jobs utilizing a "one-way traffic pattern" may be exempt from the requirements for "turnouts" or for "sufficient width for two buggies to pass."

Exemption: Runways less than 12 inches above the floor or ground which are utilized by hard-powered buggies only, may be exempt from the requirements for guardrails and wheelguards.

(8) **Concrete pumps and placing booms.**

(a) **Definitions.**

Concrete delivery hose. A flexible concrete delivery hose which has two end couplings.

Concrete pump. A construction machine that pumps concrete.

Controls. The devices used to operate a machine.

Delivery systems. The pipe, hoses and components, through which the concrete is pumped.

Grooved end. A pipe clamp pipe connection where a groove is machined or rolled directly into the outside of the pipe wall (for example: Victualic).

Material pressure. The pressure exerted on the concrete inside the delivery system.

Placing boom and placing unit. A manual or power driven, slewable working device which:

• Consists of one or more extendable or folding parts for supporting the concrete delivery system, and directs the discharge into the desired location; and

• May be mounted on trucks, trailers, or special vehicles.

Qualified person. Someone who:

• Possesses a recognized degree or certificate of professional standing; or

• Has extensive knowledge, training, and experience; or

• Successfully demonstrated the ability to resolve problems relating to the work.

Restraining devices. A sling, cable, or equivalent device used to minimize excess movement of a delivery system in case of separation.

Whip hoses. A suspended hose that has only one coupling and is used to direct the delivery of concrete.

(b) **Equipment requirements.**

(i) Equipment identification tag.

You must ensure the following identification is furnished if originally identified by the manufacturer and on all pumps manufactured after January 1, 1998:

• The manufacturer's name;

• The year of manufacture;

• The model and serial number;

• The maximum material pressure;

• The maximum allowable pressure in the hydraulic system; and

• The maximum weight per foot of delivery system including concrete.

(ii) Manufacturer's manual.

You must have the manufacturer's operation/safety manual or equivalent available for each concrete pump or placing boom.

(iii) Unsafe condition of equipment.

If during an equipment inspection a condition is revealed that might endanger workers, you must not return the equipment to service until the condition is corrected.

(iv) Controls.

Controls must have their function clearly marked.

(v) Hydraulic systems.

(A) Concrete pumps and placing booms hydraulic systems must have pressure relief valves to prevent cylinder and boom damage.

(B) Hydraulic systems must have hydraulic holding valves if hose or coupling failure could result in uncontrolled vertical movement.

(vi) Certification.

In the event of failure of a structural member, overloading, or contact with energized electric power lines and before return to service, the equipment must be certified safe by:

• The manufacturer; or

• An agent of the manufacturer; or

• A professional engineer.

(vii) Marking weight. A permanent, legible notice stating the total weight of the unit must be marked on:

• Trailer or skid mounted concrete pumps;

• Placing booms; and

• All major detachable components over 500 pounds.

(viii) Lifting a pump.

A concrete pump must be lifted using the lift points specified by the manufacturer or a professional engineer.

(ix) Emergency shutoff.

A concrete pump must have a clearly labeled emergency stop switch that stops the pumping action.

(x) Inlet and outlet guarding.

(A) The waterbox must have a fixed guard to prevent unintentional access to the moving parts.

(B) The agitator must be guarded with a point of operation guard in accordance with chapter 296-806 WAC, Machine safety, and the guard must be:

• Hinged or bolted in place;

• At least 3 inches distance from the agitator;

• Be capable of supporting a load of 250 pounds.

(C) A person must not stand on the guard when the pump or agitator is running.

(xi) Outriggers.

(A) You must use outriggers in accordance with the manufacturer's specifications.

(B) Concrete pump trucks manufactured after January 1, 1998, must have outriggers or jacks permanently marked to indicate the maximum loading they transmit to the ground.

(xii) Load on a placing boom.

(A) The manufacturer's or a licensed, registered, structural engineer's specifications for the placing boom must not be exceeded by:

• The weight of the load;

• The length and diameter of suspended hose;

• The diameter and weight of mounted pipe.

(B) A concrete placing boom must not be used to drag hoses or lift other loads.

(C) All engineering calculations regarding modifications must be:

• Documented;

• Recorded; and

• Available upon request.

(xiii) Pipe diameter thickness. The pipe wall thickness must be measured in accordance with the manufacturer's instruction, and:

• Be sufficient to maintain a burst pressure greater than the maximum pressure the pump can produce;

• The pipe sections must be replaced when measurements indicate wall thickness has been reduced to the limits specified by the manufacturer.

(xiv) Pipe clamps.

(A) You must not pump concrete through a delivery system with grooved ends, such as those for Victualic-type couplers.

(B) Pipe clamps must have a pressure rating at least equal to the pump pressure rating.

(C) Pipe clamps contact surfaces must be free of concrete and other foreign matter.

(D) If quick connect clamps are used, you must pin or secure them to keep them from opening when used in a vertical application.

(xv) Delivery pipe.

(A) Delivery pipe between the concrete pump and the placing system must be supported and anchored to prevent movement and excessive loading on clamps.

(B) Double ended hoses must not be used as whip hoses.

(C) Attachments must not be placed on whip hoses (i.e., "S" hooks, valves, etc.).

Table 1, Nonmandatory

Recommended maximum yards per hour through hose

Hose Diameter	Hose Length (12' and less) Max. yards per hour	Hose Length (12' and longer) Max. yards per hour
2"	30	30
3"	90	50
4"	160	110
5"	See manufacturer specs	See manufacturer specs

• The above figures are based on a minimum of a 4" slump and a 5 sack mix.

• Variables in mix design can have an effect on these ratings.

• Aggregate should not exceed 1/3 the diameter of the delivery system.

(xvi) Restraining. A restraining device must:

• Be used on attachments suspended from the boom tips; and

• Have a load rating not less than 1/5 of its ultimate breaking strength.

(xvii) Equipment inspection.

(A) An inspection must be conducted annually for the first 5 years and semiannually thereafter and must include the following:

• Nondestructive testing of all sections of the boom by a method capable of ensuring the structural integrity of the boom;

• Be conducted by a qualified person or by a private agency.

(B) The inspection report must be documented and a copy maintained by the employer and in each unit inspected. It must contain the following:

• The identification, including the serial numbers and manufacturer's name, of the components and parts inspected and tested;

• A description of the test methods and results;

• The names and qualifications of the people performing the inspection;

• A listing of necessary repairs; and

• The signature of the manufacturer, an agent of the manufacturer, or a qualified person.

Note: See WAC 296-155-628 (8)(d) for the inspection worksheet criteria.

(xviii) Equipment repair.

(A) Replacement parts must meet or exceed the original manufacturer's specifications or be certified by a registered professional structural engineer.

(B) A properly certified welder must perform any welding on the boom, outrigger, or structural component.

(xix) Compressed air cleaning of the piping system. To clean the piping system:

(A) The pipe system must be securely anchored before it is cleaned out.

(B) The flexible discharge hose must be removed.

(C) Workers not essential to the cleaning process must leave the vicinity.

(D) The compressed air system must have a shutoff valve.

(E) Blow out caps must have a bleeder valve to relieve air pressure.

(F) A trap basket or containment device (i.e., concrete truck, concrete bucket) must be available and secured to receive the clean out device.

(G) Delivery pipes must be depressurized before clamps and fittings are released.

(c) Qualification and training requirements.

(i) Operator trainee—Qualification requirements. To be qualified to become a concrete pump operator, the trainee must meet the following requirements unless it can be shown that failure to meet the requirements will not affect the operation of the concrete pump boom.

(A) Vision requirements:

• At least 20/30 Snellen in one eye and 20/50 in the other. Corrective lenses may be used to fulfill this requirement;

• Ability to distinguish colors, regardless of position, if color differentiation is required;

• Normal depth perception and field of vision.

(B) Hearing requirements: Hearing adequate to meet operational demands. Corrective devices may be used to fulfill this requirement.

(ii) Operator trainee—Training requirements. Operator trainee training requirements include, but are not limited to, the following:

(A) Demonstrated their ability to read and comprehend the pump manufacturer's operation and safety manual.

(B) Be of legal age to perform the duties required.

(C) Received documented classroom training and testing (as applicable) on these recommended subjects:

• Driving, operating, cleaning and maintaining concrete pumps, placing booms, and related equipment;

• Jib/boom extensions;

• Boom length/angle;

• Manufacturer's variances;

• Radii;

• Range diagram, stability, tipping axis; and

• Structural/tipping determinations.

(D) Maintain and have available upon request a copy of all training materials and a record of training.

(E) Satisfactorily completed a written examination for the concrete pump boom for which they are becoming qualified. It will cover:

• Safety;

• Operational characteristics and limitations; and

• Controls.

(iii) Operator—Qualification requirements. Operators will be considered qualified when they have:

(A) Completed the operator trainee requirements listed in (c)(i) and (ii) of this subsection.

(B) Completed a program of training conducted by a qualified person, including practical experience under the direct supervision of a qualified person.

(C) Passed a practical operating examination of their ability to operate a specific model and type of equipment. Possess the knowledge and the ability to implement emergency procedures.

(D) Possess the knowledge regarding the restart procedure after emergency stop has been activated.

(E) Possess the proper class of driver's license to drive the concrete pump truck.

(F) Demonstrate the ability to comprehend and interpret all labels, safety decals, operator's manuals, and other information required to safely operate the concrete pump.

(G) Be familiar with the applicable safety requirements.

(H) Understand the responsibility for equipment maintenance.

(d) Concrete pump inspection worksheet criteria. Concrete pump trucks will be inspected using the following criteria: The manufacturer's required inspection criteria will be followed in all instances.

Note: DOT requirements for inspections - Ref. 49.C.F.R.396.11, Driver Vehicle Inspections and 396.13, Driver Pre-Trip Inspections; and WAC 296-155-610.

(i) Hydraulic systems.

(A) Oil level;

(B) Hoses;

(C) Fittings;

(D) Holding valves;

(E) Pressure settings;

(F) Hydraulic cylinders;

(G) Ensure that the emergency stop system is functioning properly;

(H) All controls clearly marked.

(ii) Electrical.

(A) All systems functioning properly.

(B) All remote control functions are operating properly. Ensure that the emergency stop system is functioning properly.

(C) All controls clearly marked.

(iii) Structural.

(A) Visual inspection for cracks, corrosion, and deformations of the concrete pump with placing boom structure, and all load carrying components such as outriggers, cross frames, torsion box beams, and delivery line support structures that may lead to nondestructive testing.

(B) Visual examination of all links, pivots, pins, and bolts.

(C) Vertical and horizontal movement at the turret, turntable, rotation gear lash, bearing tolerances, not to exceed manufacturer's specifications.

(iv) Piping systems.

(A) Wall thickness must not exceed original manufacturer's specifications.

(B) Mounting hardware for attaching delivery system.

(C) Correct clamps and safety pins.

(v) Safety decals.

All safety decals must be in place as required by the manufacturer.

(9) **Concrete buckets.**

(a) Concrete buckets equipped with hydraulic or pneumatic gates must have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(b) Concrete buckets must be designed to prevent concrete from hanging up on top and the sides.

(c) Riding of concrete buckets for any purpose is prohibited, and you must keep vibrator crews out from under concrete buckets suspended from cranes or cableways.

(d) When discharging on a slope, you must block the wheels of ready-mix trucks and set the brakes to prevent movement.

(10) **Tremies.** You must secure sections of tremies and similar concrete conveyances with wire rope (or equivalent materials in addition to the regular couplings or connections).

(11) **Bull floats.** Bull float handles, used where they might contact energized electrical conductors, must be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

(12) Masonry saws must be constructed, guarded, and operated in accordance with WAC 296-155-367 (1) through (4).

(13) **Lockout/tagout procedures.** You must not permit any employee to perform maintenance or repair activity on equipment (such as compressors, mixers, screens, or pumps used for concrete and masonry construction activities) where the inadvertent operation of the equipment could occur and cause injury, unless all potentially hazardous energy sources have been locked out and tagged in accordance with chapter 296-155 WAC, Part I.

AMENDATORY SECTION (Amending WSR 16-09-085, filed 4/19/16, effective 5/20/16)

WAC 296-155-689 Placing and removal of forms. (1) When moved or raised by crane, cableway, A-frame, or similar mechanical device, forms must be securely attached to slings having a minimum safety factor of 5. Use of No. 9 tie wire, fiber rope, and similar makeshift lashing is prohibited.

(2) You must use taglines in moving panels or other large sections of forms by crane or hoist.

(3) All hoisting equipment, including hoisting cable used to raise and move forms must have a minimum safety factor incorporated in the manufacturer's design, and the manufacturer's recommended loading must not be exceeded. Field-fabricated or shop-fabricated hoisting equipment must be designed or approved by a registered professional engineer, incorporating a minimum safety factor of 5 in its design. Panels and built-up form sections must be equipped with metal hoisting brackets for attachment of slings.

(4) Forms intended for use where there is a free fall of over 10 feet must be equipped with adequate scaffolding and guardrails, or employees working on the forms must be protected from falls in accordance with chapter ((~~296-155 WAC, Part C-1~~)) 296-880 WAC during forming and stripping operations.

(5) You must not release vertical forms being raised or removed in sections until adequately braced or secured. You must not release overhead forms until adequately braced or secured.

(6) You must protect workers or others at lower levels from falling materials. You must erect appropriate warning signs along walkways.

(7) You must not remove forms until the concrete is cured. The concrete must be adequately set in order to permit safe removal of the forms, shoring, and bracing. You must adhere to engineer's specifications and local building codes in determining the length of time forms should remain in place following concrete placement. In addition, you must perform tests on field-cured concrete specimens in order to insure that concrete has obtained sufficient strength to safely support the load prior to removal of forms.

WSR 20-08-135
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 1, 2020, 11:57 a.m., effective May 2, 2020]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule making simplifies the filing and transmittal process by allowing certain appeals, including nonresident student transfer appeals, to be submitted directly to the office of administrative hearings (OAH) from the filing party. The adopted rule would simplify the filing process and reduce staff time and resource use for both the office of superintendent of public instruction (OSPI) and OAH staff. The impact on filing parties would be the initial change of filing address and email. There are also technical changes made to clarify cited authorities.

Citation of Rules Affected by this Order: Repealing WAC 392-137-200; and amending WAC 392-101-001, 392-101-005, 392-101-010, 392-101-015, 392-137-190, and 392-137-195.

Statutory Authority for Adoption: RCW 34.05.220, 28A.225.230.

Adopted under notice filed as WSR 19-24-077 on December 2, 2019.

Changes Other than Editing from Proposed to Adopted Version: The adopted version does not contain changes proposed in OTS 1911.1 to the following sections: WAC 392-172A-05085 Due process hearing request filing and response, 392-172A-05090 Resolution process, 392-172A-05100 Hearing rights, and 392-172A-05160 Appeal of placement decisions and manifestation determinations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 1, 2020.

Chris Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-101-001 Authority. The authority for this chapter is RCW 34.05.220 which authorizes the office of superintendent of public instruction to adopt rules governing the formal and informal procedures prescribed or authorized by chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-101-005 Administrative practices regarding hearings and rule proceedings. ((~~The superintendent of~~

~~public instruction is~~)) (1) Administrative practices before and pertaining to the office of superintendent of public instruction are governed by the state Administrative Procedure Act, chapter 34.05 RCW, the Washington State Register Act, chapter 34.08 RCW, and the state office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of ((~~"rule" making proceedings and the conduct of "contested case" hearings~~)) "agency action," "adjudicative proceedings," and "rule making" as these terms are defined in RCW 34.05.010 ((~~(2) and (3). Appearances in representative capacities before the superintendent of public instruction; the procedures and conditions governing petitions for declaratory rulings or the adoption, amendment, or repeal of a rule; and, the standards, procedures and conditions governing the conduct of contested case hearings and proceedings by or before the superintendent of public instruction shall be as set forth in rules of the state code reviser and the office of administrative hearings as now or hereafter amended. The rules of the code reviser are currently set forth in chapters 1-08 and 1-21 WAC. The rules of the office of administrative hearings are currently set forth in chapter 10-08 WAC~~)) The rules of the state code reviser provided in chapter 1-21 WAC, and as hereafter amended, and the rules of the office of administrative hearings provided in chapter 10-08 WAC, and as hereafter amended, shall govern procedures and practices before the superintendent of public instruction for the following: Petitions for declaratory rulings; petitions for adoption, amendment, or repeal of a rule; and the conduct of adjudicative proceedings. All other regulatory actions and hearings conducted by the office of superintendent of public instruction may be conducted informally at the discretion of the superintendent.

AMENDATORY SECTION (Amending WSR 15-15-107, filed 7/16/15, effective 8/16/15)

WAC 392-101-010 Conduct of administrative hearings. The office of superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to render the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to chapter 392-137 WAC ((~~392-137-055(2)~~)).

(2) Special education hearings pursuant to chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints pursuant to WAC ((~~392-190-075~~)) 392-190-079.

(4) Professional certification appeals pursuant to WAC 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.

(9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

AMENDATORY SECTION (Amending WSR 91-02-095, filed 1/2/91, effective 2/2/91)

WAC 392-101-015 Determination of indigency—Provision of free transcript. A determination of indigency shall be made for all persons wishing the provision of a free transcript of proceedings pursuant to the following standards:

(1) Any ((~~person(s)~~)) person receiving one or more of the following types of public assistance programs: ((~~Aid to families with dependent children, general assistance, poverty related veterans' benefits, food stamps, refugee resettlement benefits, medicaid, or~~))

(a) Temporary assistance for needy families;

(b) Aged, blind, or disabled assistance benefits;

(c) Medical care services under RCW 74.09.035;

(d) Pregnant women assistance benefits;

(e) Poverty-related veterans' benefits;

(f) Food stamps or food stamp benefits transferred electronically;

(g) Refugee resettlement benefits;

(h) Medicaid; or

(i) Supplemental security income.

(2) Any ((~~person(s)~~)) person receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

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ADMINISTRATIVE SERVICES
Legal Services
Old Capitol Building, FG-11
Olympia, WA 98504-3211

STATE OF WASHINGTON
Superintendent of Public Instruction

DETERMINATION OF INDIGENCY

I. APPLICANT INFORMATION

APPLICANT'S NAME	CASE NUMBER
ADDRESS	TELEPHONE NUMBER ( )
CITY/STATE/ZIP	SOCIAL SECURITY NUMBER (optional) — — / DATE OF BIRTH
EMPLOYER	OCCUPATION
EMPLOYER ADDRESS	
CITY/STATE/ZIP	
STUDENT'S NAME	

II. SUPPORT OBLIGATIONS

FATHER'S NAME	Total Number of Dependents (include applicant in count) _____
MOTHER'S NAME	MOTHER'S MAIDEN NAME

III. PRESUMPTIVE ELIGIBILITY

YES NO

☐ ☐ A. Does applicant receive public assistance. If "yes" then in what form:

☐ AFDC [1] ☐ SSI [2] ☐ Food Stamps ☐ General Assistance ☐ Medicaid ☐ Poverty-Related V.A. Benefits [3] ☐ Refugee Resettlement Benefits ☐ Other; specify

☐ ☐ B. Is the annual income of applicant (after taxes), 125% or less of the current federally established poverty level? Specify income amount after taxes $_____.

If Section III, A or B applies (please provide documentation) and complete Section IX only. If Section III is not applicable, complete all remaining sections.

1 Aid to Families with Dependent Children
2 Supplemental Security Income
3 Veteran's Administration

IV. MONTHLY INCOME

a. Monthly take-home pay (after deductions)	$
b. Spouse's take-home pay (enter N/A if conflict)	$
c. Contribution from any person domiciled with applicant and helping to defray his/her basic living costs	$
d. Interest, dividends, or other earnings	$
e. Non-poverty based assistance (Unemployment, Social Security, Worker's Compensation, pension, annuities) (do not include poverty-based assistance. See IV a.)	$
f. Other income (specify)	$
TOTAL INCOME	$

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V. MONTHLY EXPENSES (for applicant and dependents; average where applicable)

a. Basic living costs -	$
Shelter (rent, mortgage, board)	$
Utilities (heat, electricity, water); enter 0 if included in cost of shelter)	$
Food	$
Clothing	$
Health Care	$
Transportation	$
Loan Payments (specify) _____	$
b. Court imposed obligations (check) ____Fines ____Court Costs ____Restitution ____Support ____Other	$
c. Other expenses (specify)	$
TOTAL EXPENSES	$

VI. TOTAL INCOME PART IV, MINUS TOTAL EXPENSES PART V

Disposable Net Monthly Income $

VII. LIQUID ASSETS

a. Cash, savings, bank accounts (include joint accounts)	$
b. Stocks, bonds, certificates of deposit	$
c. Equity in real estate	$
d. Equity in motor vehicle required for employment, IF over $3,000 (list overage: value minus $3,000) Make of car: Year:	$
e. Equity in additional vehicles (list total value)	$
f. Personal property (jewelry, boat, stereo, etc.)	$
TOTAL LIQUID ASSETS	$

VIII. DETERMINATION OF INDIGENCY

a. Disposable Net Monthly Income (from Section VI.)		$
b. Total Liquid Assets (from Section VII.)	+	$
c. TOTAL AVAILABLE FUNDS (a. plus b.)	=	$

If (c) is zero (0) or less, applicant if INDIGENT. If (c) is greater than (d), party is NOT INDIGENT.

ASSESSMENT AMOUNT $

IX. AFFIDAVIT AND NOTIFICATION

I, _____(print name) do hereby certify (or declare) under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct. By my signature below, I authorize the Superintendent of Public Instruction to verify all information provided here. I further swear to immediately report any change in financial status to the Superintendent of Public Instruction.

_____ / _____ _____

SIGNATURE DATE PLACE

RETURN TO: Legal Services
Office of Superintendent of Public Instruction
Old Capitol Building, FG-11
Olympia, WA 98504-3211

OSPI USE ONLY

☐ Indigent
☐ Not Indigent

_____ Signature

_____ Date _____ Title

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AMENDATORY SECTION (Amending WSR 90-19-068, filed 9/17/90, effective 10/18/90)

WAC 392-137-190 Appeal notice—Denial of release or admission. Requests for an appeal shall be addressed to the superintendent of public ((~~instruction~~)) instruction's designee and shall contain the following:

(1) The name, age, grade level, and residence address, if any, of the student.

(2) The name, mailing address, if any, and the legal relationship of the person, if any, filing the notice of appeal on behalf of the student.

(3) In the case of denial of release, documentation indicating the conditions of WAC 392-137-155 have been met and a copy of all documents or other written evidence submitted to the resident district which indicates the grounds for the requested release.

(4) In the case of denial of admission, documentation that the nonresident district has failed to comply with the standards and procedures specified in WAC 392-137-205.

AMENDATORY SECTION (Amending WSR 97-20-003, filed 9/17/97, effective 10/18/97)

WAC 392-137-195 Filing of notices of appeal. ((~~There is no prescribed method for transmitting appeals to the superintendent of public instruction but receipt of such written appeals by the superintendent of public instruction is a condition precedent to jurisdiction. The material may be hand-delivered or mailed to the following address:~~

~~Legal Services~~
~~Office of the Superintendent of~~
~~Public Instruction~~
~~P.O. Box 47200~~
~~Olympia, Washington 98504-7200~~)) The superintendent of public instruction's designee must receive a notice of appeal as a condition precedent to exercising jurisdiction under this chapter. The notice of appeal must be filed via mail, by fax, or electronically directly with the office of superintendent of public instruction's designee, the office of administrative hearings, at the following:

Mail:

Office of Administrative Hearings
600 University Street, Suite 1500
Seattle, WA 98101-3126

Fax: 206-587-5135

Electronically: Successfully uploading documents through the filing portal operated by the office of administrative hearings.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-137-200 Appeal to SPI—Denial of application by nonresident district.